UNITED STATES OF AMERICA.

Supreme Court of the United States

FRED A. BAKER, Plaintiff in Error, vs. STEPHEN BALDWIN, Defendant in Error.	Error to Supreme Court of Michigan.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

December 13, 1897, Stephen Baldwin tendered to Fred A. Baker 364 silver coins of the United States, of the denomination of one dollar, and coined since 1878, in payment of a mortgage debt contracted January 12, 1894. Baker refused to receive the coins tendered on the ground that the legal tender provisions of the Act of Congress of February 28, 1878, commonly known as the Bland-Allison Act, are unconstitutional and void.

Baldwin then filed a bill in the Circuit Court for the County of Oakland under a State statute authorizing it, and prayed that the tender made by him might be declared and decreed to be good and sufficient in law, and that the defendant might be required to discharge the mortgage.

The defendant Baker answered the bill admitting the existence of the mortgage debt, and the tender of 364 silver dollars, but insisting that the provisions of the Act of

February 12, 1873, as re-enacted by Section 3511 of the Revised Statutes of the United States, making the gold dollar "the unit of value," is still in full force, and that the provision of the Act of February 28, 1878, making silver dollars "a legal tender at their nominal value for all debts and dues, public or private, except where otherwise expressly stipulated in the contract," is unconstitutional because that act did not open the mints to the free and unlimited coinage of silver, so as to make the silver dollar a standard of value, and did not provide for the redemption of silver dollars in gold, and therefore the act cannot be sustained, either as providing for the reintroduction of a bimetallic standard into the coinage of the United States, or as establishing the silver dollar as a subsidiary coin.

In this connection the answer of the defendant specifically insisted that the legal tender provisions of the Act of February 28, 1878, are not within the power of Congress to coin money and regulate the value thereof, and are in conflict with the provision of the Fifth Amendment of the Constitution of the United States, that no person shall be deprived of life, liberty or property without due process of law.

The Oakland Circuit entered a decree for the complainant, and the defendant appealed to the Supreme Court of Michigan, where the decree of the Circuit Court was affirmed.

Baldwin vs. Baker, 121 Mich., 259.

"Grant, C. J. (after stating the facts): The sole question presented is whether the act in question making the silver dollar of 412.5 grains troy of standard silver a full legal tender for all debts and dues, public and private, is constitutional. The learned counsel for the defendant has filed an elaborate brief upon the question, discussing the history of coinage in this country, and the various acts of Congress upon the subject. Did we not regard the question as foreclosed by the decisions of the Supreme Court of the United States, we should be compelled to enter upon a studious and laborious examination of the subject. We are, however, of the opinion that that court in the so-called "Legal Tender Cases" has placed the question beyond discussion in other courts. Knox vs. Lee, 12 Wall., 457; Juilliard vs. Greenman, 110 U. S., 444, 4 Sup. Ct., 122. Counsel argues that what was said in those cases affecting the question he now raises was obiter dicta, and therefore not binding. We are of the opinion that the court in those cases fully covered the question. The language is clear

and unmistakable. It appears conceded that it covers the question unless it is a dictum. We must regard such holding as the deliberate and authoritative enunciation by the court of the law. We therefore decline to enter upon a discussion of the question, because, in our opinion, it is stare decisis. See Knox vs. Lee, 12 Wall., 551-553. This case was subsequently approved by the nearly unanimous opinion of the same court in Juilliard vs. Greenman, 110 U. S., 438, 4 Sup. Ct., 122, only one justice dissenting. Decree affirmed with costs. The other justices concurred."

The defendant and appellant sued out a writ of error from the Supreme Court of the United States to the Supreme Court of Michigan, and submits the following:

ASSIGNMENT OF ERRORS.

And now comes the said Fred A. Baker, plaintiff in error, by Albert B. Hall, his counsel, and says that in the record and proceedings aforesaid, and in the giving of the judgment and decree aforesaid, there are the following manifest errors:

1. The Supreme Court of Michigan erred in holding that the tender of 364 silver coins of the United States, of the denomination of one dollar, by the defendant in error to the plaintiff in error as aforesaid, was a good and sufficient tender in law, for the payment of the mortgage debt held by the plaintiff in error.

2. The Supreme Court of Michigan erred in holding that the legal tender provisions of the Act of Congress of February 28, 1878, commonly known as the Bland-Allison Act, are within the provision of the Constitution of the United States, that Congress shall have power to coin money, and regulate the value thereof, and of foreign coin, and are not in conflict with the provision of the Fifth Amendment of the Constitution of the United States, that no person shall be deprived of life, liberty, or property without due process of law.

3. The Supreme Court of Michigan erred in holding that the dicta of Mr. Justice Strong, in delivering the opinion of the court, in Legal Tender Cases, 12 Wall., 457, and of Mr. Justice Gray, in delivering the opinion of the court, in Juilliard vs. Greenman, 110 U. S., 444, expressing the opinion that Congress has power to affect existing con-

tracts, by debasements of the coinage, are authoritative and conclusive.

4. The Supreme Court of Michigan erred in affirming the decree of the Circuit Court of the County of Oakland in this cause.

Wherefore, the plaintiff in error prays that the judgment and decree aforesaid may be reversed, and a judgment and decree granted directing the Supreme Court of Michigan to dismiss the bill of complaint of the defendant in error, etc.

ALBERT B. HALL,
Counsel for Plaintiff in Error.

FRED A. BAKER,
In pro per.,
Of Counsel.

BRIEF BELOW.

On the final hearing of this cause in the Supreme Court of the United States, we desire to make use of the brief we submitted to the Supreme Court of Michigan. We will refer to it as Vol. 1, pp. 1-198.

In that brief we collected all the coinage statutes of the United States, and also all the English statutes on the subject from Magna Charta to the present day.

A simple perusal of these statutes, extending as they do over a period of more than six hundred years of coinage legislation, is sufficient to demonstrate to any man of ordinary understanding that the whole object and purpose of the art of coining money as understood and practiced by the people who speak the English language, is to secure the integrity in fineness and weight of the pieces or portions of the precious metals designed for circulation and use as money.

Certain it is that no English or American statute, until we come to the Act of Congress of February 28, 1878, ever attempted or purported to give to any coin, whatever, a nominal or legal value, greater or less than the commercial or commodity value of the pure silver or the pure gold contained in it (unless adequate provision was made for its redemption in coin of full value); and it will be our purpose, in the historical, legal and constitutional argument to be presented in the present brief, to show that this principle is an integral part of the written and unwritten constitutional law of the United States, and as such, the supreme law of the land.

I.

More than a century before Magna Charta, it was a declared and undisputed principle of the English Constitution that the sovereign powers of government vested in the King and his Council did not include the power to debase the coin.

This is a strong proposition, but its truth is established by the facts of authentic history.

The vigorous and war-like tribes of men who inhabited central Europe, and overran Italy, sacked the Imperial City and destroyed the civilization of the ancient Romans, also spread all over western Europe, and became the dominant element, the controlling force, in the upbuilding of the great modern nations of Spain, France and England. They originally recognized no private ownership of land, and their means of subsistence, and their wealth, consisted of herds of cattle pastured on the land which was held and enjoyed in common.

Their principle articles of food were milk and beef, and they were trained from youth to feats of arms.

The condition of England during the fifth and sixth centuries and its isolation, made it a fit home for the invading Saxons, and it is not surprising that there their primitive customs and institutions should gain their strongest foothold, and the race itself should eventually attain its highest development.

The Saxons took to England their own breeds of cattle, and also their own system of weights, of pounds, ounces, pennyweights and grains. This system of weights subsequently became known in Germany as Cologne weight, and in England as the Tower pound.

The Saxons divided England into seven different kingdoms, known as the Saxon heptarchy. Each of these seven kings coined silver, and so did the sole monarchs, when England became united into a single kingdom, under the Saxon kings who reigned from 827 to the Norman conquest in 1066. The officers or workmen of the mints were known as "moneyers." It is undoubtedly true that with mints scattered all over England, there were many debasements of the coin, but there does not appear to be anything in the ancient Saxon chronicles or records indicating that such debasements were regarded as legal, or that the Saxon

kings claimed any prerogative right to issue base or light coin.

On the contrary, the laws of Ethelred and Athelstan severely punished moneyers who were guilty of making false money.

"Their hands were to be cut off and set upon the mint-smithy, says a law of Athelstan; they were to be put to death, says a law of Ethelred."

1 Ashley's Eng. Econom. His., 168.

Ashley refers in a note to Athelstan, 11, 14, par. 1; Ethelred, 11, 8; as found in Schmid's Gesetze der Angelsachen, 140, 216.

Harold, who was killed in the battle of Hastings, had been King of England only nine months, and hence it was customary, after the conquest, when referring to the laws of the Saxon monarchy, to mention those of Edward the Confessor, who was Harold's predecessor.

Edward had rescued the crown of England from the family of Canute, the Dane, and as Edward was a popular king, and held the crown for twenty-five years preceding the conquest, his memory was dear to the English for many years thereafter.

William the Conqueror was a wise man, and when he was crowned king of England a short time after the battle of Hastings, he continued in force the laws and customs of the English.

As the tyranny of the Norman kings who succeeded William the Conqueror increased, they ignored and disregarded the laws and customs which had prevailed before the conquest under the Saxon kings, and it became the favorite cry of the English to demand a restoration of the laws of Edward the Confessor, who became to be regarded as a saint. The Normans who settled in England after the conquest gradually grew dissatisfied with the royal administration and became imbued with the sentiments and desires of the English. The demand for the restoration of the old Saxon laws and customs became national in its character, and increased in force, until King John was forced to grant the Great Charter.

The constitutional development which resulted in Magna Charta has a direct bearing on the sovereign power to coin money, and it is our purpose to briefly trace that development, and to thereby establish the truth of the historical proposition we have above laid down.

William the Conqueror did not debase the coinage, but kept it at its ancient state of purity and weight. In his

duchy of Normandy, a tax had been sometimes levied as a consideration or inducement to the duke to maintain a good coinage, and not to debase the money. This tax was called "moneyage." It is not certain that William the Conqueror ever levied any such tax in England; but his son and successor, William Rufus, did.

This brings us to the first great landmark in the coinage history of England after the Norman conquest.

The king could not very well collect a tax as a consideration for keeping the coinage good and true, and then debase it. He might be guilty of such an act of perfidy because of his absolute and arbitrary power, but no one could regard it as legal, or anything more than a usurpation. However, neither William I. or William II. did any such thing.

At the death of the latter, in 1100, the crown was usurped by Henry I., who, besides taking the usual coronation oath to maintain the laws and execute justice, passed a charter, in which, among other things, he renounced the right of imposing moneyage, and promised a general confirmation and observance of the laws of King Edward the Confessor. He agreed to bring to justice any moneyers or other persons who should make false money.

The following is a translation of this short but famous charter. It was the forerunner of the Great Charter of one hundred and fifteen years later, and as it contains an express limitation on the power of the crown to coin money, we print it in full.

CHARTER OF HENRY I.

In the year of Our Lord, 1101,—Henry, Son of William, by the Grace of God, King of the English, since the death of his brother, William: To all the faithful, Greeting.

1. Know that by the mercy of God and the common consent of all the barons of the kingdom of England, I was crowned as king of said Kingdom; and as it is oppressed by gross abuses, I, in the presence of God and because of the love I bear you, grant full liberty of the holy church of God, so that its property can neither be sold nor rented at the death of an archbishop, bishop or abbot, and that nothing can be accepted by me from the property of the church or from any member of its clergy, before its successor has been appointed.

I abolish all the wicked customs by which the kingdom of England has been oppressed, which bad customs I here particularize.

2. At the death of any of the barons who hold from me, or of any one who hold from my barons, his heir shall not succeed to his estate as was done in the time of my brother, but he shall take only after a lawful payment of the charges thereon. Likewise, all tenants under my barons shall become seized of the enfeoffed lands, only after an equitable settlement with their lords of the charges thereon.

3. If any of my barons or any of those who hold under my barons should wish to marry his daughter, his sister, grand-daughter or any of his kindred, he shall confer with me about the same, but I can receive nothing for the granting of a license to marry or forbid the marriage taking place, except if the purpose is to marry her to an enemy of mine.

And, if at the death of any of my barons, or any of those holding under my barons, his daughter happens to succeed to his estate, with the advice of my barons, I shall allow her to marry and become seized of her inheritance.

And, in case of her husband's death, the surviving wife, if there are no children, shall have her dower and the right to remarry, and I shall not give her in marriage without her consent.

4. If the surviving wife has children she shall have her dower and the liberty of remarrying as long as her estate is of legitimate descent, and I shall not give her in marriage unless with her consent; and, the guardianship of her children and the administration of the estate shall be either exercised by the wife or by any other kinsman who may be deemed more suitable.

And I order that my barons act in the same manner towards the sons, daughters or wives of their tenants.

5. *The common moneyage which was seized throughout the state and counties which was not in the reign of King Edward, this I will not in any manner from thenceforth at all defend. If any one shall be taken, either a moneyer or another, with false money, then let right and justice be done.*

6. All the choses in action and all the claims in favor of my brother, I release; except the claims I have in my own name, or which were in favor of some other person and sought to be enforced in the name of my brother. And

if any charge on the estate of any one has been heretofore released, I confirm all such releases if made in good faith.

7. And if by reason of being disabled for military service, any of my barons was subject to the payment of any dues in money, I hold the same as having been paid.

If any one bound to military service was incapacitated by sickness to do so, and has not paid any money contribution, nor made any disposition to have that money paid, his wife, children or kinsmen and administrators shall apply that money according to his intention as well as they can construe it.

8. And if any of my barons or my subjects commits a trespass, he shall not give a money pledge for his acquittal as used to be done in the times of my father or my brother; but he shall make amend according to the character of his offense as was done prior to the time of my father when my remoter ancestors reigned. But if convicted of treason or felony, his punishment shall be according to justice.

9. I forgive all prior homicides committed up to the day I was crowned as king; but those committed since shall be punished according to the law under King Edward.

10. I retain the title to the forest lands according to the common consent of the barons, in the same manner as my father held them.

11. To the knights, I grant their lands free of all charges and servitude in order that, by the relief of such burdens, they may have more time to practice horsemanship and the handling of arms for the end of being at my service in the protection of my kingdom.

12. I command that peace be kept in all my kingdom.

13. I restore the laws of King Edward as amended by my father with the consent of his barons.

Should any one have taken possession of some of my property or that of any one else, after the death of my brother, King William, it must be immediately restituted, and any one persisting in retaining the same, if found, shall be caused to make severe amend upon conviction.

Witnesseth, before Mauritius, bishop of London, Gundufus, bishop, and William, bishop elect, Counts Henry, Simon, Walter Gifford, Robert of Monfort, Roger and Henry of Porte in London, where I was crowned.

Hume, the historian, referring to this charter, says:

"To give greater authenticity to these concessions, Henry lodged a copy of his charter in some abbey of each county, as if desirous that it should be exposed to the view of all his subjects, and remain a perpetual rule for the limitation and direction of his government; yet it is certain that, after the present purpose was served, he never once thought, during his reign, of observing one single article of it; and the whole fell so much into neglect and oblivion, that, in the following century, when the barons, who had heard an obscure tradition of it, desired to make it the model of the Great Charter which they exacted from King John, they could with difficulty find a copy of it in the kingdom. But as to the grievances here meant to be redressed, they still continued in their full extent; and the royal authority, in all those particulars, lay under no manner of restriction. Reliefs of heirs, so capital an article, were never effectually fixed till the time of Magna Charta, and it is evident that the general promise here given, of accepting a just and lawful relief, ought to have been reduced to more precision, in order to give security to the subject. The oppression of wardship and marriage was perpetuated even till the reign of Charles II.; and it appears from Glanville, the famous judiciary of Henry II., that in his time, where any man died intestate—an accident which must have been very frequent when the art of writing was so little known—the king, or the lord of the fief, pretended to seize all the movables, and to exclude every heir, even the children of the deceased; a sure mark of tyrannical and arbitrary government." (1 Humes, His. Eng., 243-244.)

While Hume may be entirely correct as to Henry's disregard of the provisions of his charter, other than those relating to the coinage, it is clear that he never countenanced a debasement, and meted out to the guilty moneyers the most severe punishments.

Ruding (Vol. 1, p. 163, Annals of the Coinage of Great Britain), in his account of Henry's treatment of the coinage, says that "he, soon after his accession, ordained by charter wise and politic regulations, evidently calculated for the benefit of his subjects."

"Amongst these were the abolishing of moneyage, an oppressive tax, of Norman origin, and unknown to this kingdom in the time of Edward the Confessor, and the denouncing severe punishment against moneyers, or other persons, on whom counterfeit coins should be found.

In his laws it was ordained that falsifiers of the money should suffer the loss of a hand, without redemption."

In a note Ruding gives this account of the tax called moneyage:

"There was formerly a payment of twelve pence, every three years, due from each hearth in Normandy for moneyage, and for fouage, or the privilege of cutting wood in the forests for firing. It seems to have been almost peculiar to that duchy, and was paid, or at least one part of it, that the money might not be changed; for in those times the seigniorage, which was taken upon every alteration of the coins was highly oppressive, and it was therefore commuted for by this tax. It was introduced into England either at the time of, or soon after the Norman conquest." (See DuCange, voce Monetagium.)

Ruding continues his account as follows:

"Such, however, and so powerful were the temptations to the crime of counterfeiting, that this penalty, dreadful as it may appear, was insufficient to prevent the commission of it. Accordingly, Henry, on his return from Normandy, in 1105, found it necessary to add to the loss of a hand, the further punishment of the loss of sight and emasculation. Notwithstanding the severity of these ordinances, the money was in 1108 so much corrupted as to render a new coinage absolutely necessary. At that time the coins were picked (probably to select the heaviest for melting), bent, broken, and in consequence were frequently rejected; it was therefore ordained that the former punishments should be continued, and that no penny, nor halfpenny, which were commanded to be made round, nor even a farthing, *provided it were perfect*, should be refused. These regulations are said to have been productive of great benefit to the whole kingdom, because they were applied by the king to relieve the land from its burdens."

* * * * * * * *

"The strong hand of the law having proved ineffectual for the protection of the coins, the censures of the church were, in 1123, called to its aid. At a council which was holden at Rome in that year, when Callixtus the Second presided, some ancient statutes were revived, by which it was decreed that whoever should knowingly make, or studiously circulate, false money, should be separated

from the congregation of the faithful as one accursed, an oppressor of the poor, and a disturber of the state."

"1125. These ecclesiastical denunciations seem likewise to have been pronounced in vain, for, in about two years afterward, the king sent orders from Normandy for the punishment of all the moneyers in England by inflicting upon them the severest sentence of the law; because the money was so corrupted that it would not pass in any market."

"In compliance with these commands, Roger, Bishop of Salisbury summoned them, throughout all England, to appear at Winchester against Christmas day. When they arrived there they were taken apart singly, and underwent the dreadful infliction. The whole was done within twelve days before Christmas, and indeed, saith the Chronicler, most justly, for they had brought the greatest loss upon the whole nation, by the immense quantity of base metal which they had circulated. They were afterwards compelled to abjure the realm, and to go into banishment.

"Three moneyers alone, belonging to Winchester, are said to have escaped this cruel execution, and to them, therefore, says Dr. Milner, was committed the charge of making a new coinage to supply the whole kingdom, all the base money being cried down and cut to pieces."

"For this act of rigorous justice Henry is praised in the highest terms by historians and chroniclers, who agree in representing it as a singular instance of uprightness."

"Immediately afterwards, the money was changed; the consequence of which, if some chroniclers may be believed, was a dearness of provisions, as amounted to an actual famine."

In a note it is stated that the number of moneyers who underwent the severest sentence of the law was ninety-four, and on another occasion six persons were so punished.

Hume, in his review of the reign of Henry I., admits the vigorous conduct of that monarch in the maintenance of a good coinage.

"Stealing was first made capital in this reign; false coining, which was then a very common crime, and by which the money had been extremely debased, was severely punished by Henry. Near fifty criminals of this kind were at one time hanged or mutilated; and though these punishments seem to have been exercised in a manner somewhat arbitrary, they were grateful to the people,

more attentive to present advantages than jealous of general laws."

1 Hume's His. Eng., 268.

There is, therefore, no conflict in the evidence on this point, and we are sure of the fact that the provision in the charter of Henry I., renouncing moneyage, and promising to maintain the integrity of the money of the realm, was recognized by him as obligatory. It is not important whether he regarded the provision as creating a legal restriction, or as establishing a wise governmental policy.

The executive, legislative and judicial powers were all vested in the king, who was simply assisted by his council, which had not yet grown into a co-ordinate department of the government, and therefore, the solemn declaration of the king on his accession, issued and promulgated as a statutory guaranty to his subjects, has a constitutional character, and has always been so regarded by the English people.

At the death of Henry I., his daughter, Matilda, who had married Geoffrey Plantagenet, Count of Anjou, was the rightful heir to the crown. She claimed her inheritance, and as Henry had required his vassals to swear fealty to her, the succession seemed to be open to her, without a rival.

Stephen, a grandson of William I., however, succeeded in usurping the throne; but he had great difficulty in establishing and maintaining his authority.

Very few of the barons attended his coronation, but none gave him any open opposition. He issued a brief charter confirming the laws and liberties of Henry I. and the good customs of the time of King Edward, the Confesor.

1 Hume's His. Eng., 270-273.
1 Stubbs' Consti. His. Eng., 345-347.
Stubbs' Select Charters, 119.

In order to secure the submission of the barons, he permitted them to fortify their castles, and either gave them the right or they usurped the right, to coin money.

They filled all England with fortresses, garrisoned them with their vassals, or with hired soldiers, and carried on wars between themselves and with the king. The period was one of unbounded rapine and turbulence.

It is not surprising that, under such conditions, the barons should debase the coin minted by them. This abuse was so uniform that the fortified castles became known as the adulterine castles.

Matilda made war on Stephen in an endeavor to obtain the crown, but did not succeed. Finally her son, Henry, invaded England, and was met by Stephen with an army at Walingford, when a treaty of peace was concluded by which Stephen was to possess the crown during his lifetime, and at his death Henry was to succeed to the kingdom. This treaty included a scheme of reform. Among other measures, the royal rights which had been usurped by the barons were to be resumed, the adulterine castles were to be destroyed, and a uniform coinage was to be struck.

1 Stubbs' Consti. His. Eng. 360-361.

Not only had the barons debased the coin issued by them, but at one time during his reign Stephen himself had done so, and the reform agreed upon contemplated a correction of the whole abuse. The death of Stephen not long afterwards left the execution of the measures of reform to Henry who had great capacity of administration, and brought order, law and justice to the realm.

At Henry's coronation as Henry II. he issued a charter confirming the charter of his grandfather, Henry I., and he then proceeded to carry out the measures agreed upon at Wallingford.

Stubbs sums up his work in this direction as follows:

"The scheme adopted at Wallingford had been carried out strictly; the castles had been demolished or taken into the royal hands, the mercenaries dismissed, the fiscal earldoms abolished; the royal estates had been as far as was possible restored to cultivation, farm houses and palaces had alike been rebuilt; the courts of justice had been in full activity, and severe sentences had everywhere been executed upon the malefactors who had enjoyed impunity for many years; in particular the coiners of false or debased money had been rigidly punished."

1 Stubbs' Consti. His. Eng., 495, 496.

Eleven hundred and fifteen of the adulterine castles were actually destroyed. The moneyers were punished by mutilation and the more wealthy of them were fined. A new coinage was issued. The better opinion fixes the year 1156 as the date of its issue.

1 Ruding's Annals of the Coinage of Great Britain. 3rd edition, 167-171.

The punishment of the moneyers who made base money in the time of Henry I., the illegal character of the de-

basements by the baronage, and by the king himself, during the reign of Stephen, and the summary and effective disposition made of the subject by Henry II. furnish conclusive proof that the provisions of the charter of Henry I., providing for an honest coinage, were enforced as law, and that they expressed a recognized and settled constitutional principle.

This is strongly corroborated by further measures adopted by Henry II. at a later period in his reign to maintain the purity of the coinage.

It seems that the drastic punishments that had been resorted to by Henry I. and Henry II. were not sufficient to prevent the adulteration of the coin, and in 1180 a foreign artist, Philip Aymary, a native of Tours, was brought to England for the improvement of the money, and a second new coinage was had.

At the feast of St. Martin, 1181, the old money was called in, and new sound money was issued. It seems that during the making of the new coins the moneyers in the mint, with the suspected connivance of Aymary, attempted an adulteration. Aymary escaped punishment by Henry's lenity and was dismissed to his own country. The moneyers were bound two and two and carried in carts to the king's court and severely punished.

Id., p. 171.

More than 5,700 of the coins of Henry II. were discovered at Tealby in Lincolnshire in 1807.

"They are commonly very ill struck."

"This imperfection is so general that, although the coins found at Tealby 'were as fresh as when they first issued from the mint, yet their execution was so very bad that on many of them scarcely two letters could be discerned.' 'Yet it is so deserving of attention that the weights of them, though apparently regulated by a pair of shears, were adjusted with extraordinary accuracy;' so that 5,127 weighed 19 lbs. 6 oz. 5 dwts.; only 14 dwts. 18 gr. less than the proper weight; which, divided amongst the whole number, makes each coin deficient no more than about 1-15 of a grain. Archaeologia, vol. xvlll., p. 6."

The weights here given are instructive. They show that the 5,127 coins weighed were silver pennies each of the weight of 22 troy grains. The tower pound was then in use at the mint. The pennyweight of that pound was

equal to the weight of 32 wheat corns from the midst of the ear, and this was the equivalent of 22½ troy grains.

As the coins professed to weigh 22 troy grains, ½ of a troy grain for each pennyweight, or 5 troy pennyweights to the pound, were deducted as a seigniorage, or mint charge. The art of making coins was in an imperfect state, but the coins were brought to their correct weight by the use of shears.

The tables given by Ruding at p. 12 of his first volume show that at the time of the conquest in 1066 the silver penny weighed 22½ grains troy, and that the reduction to 22 grains was in 1300 (28 Edward I.), but the weight of the coins discovered at Tealby show that the reduction was as early as 1181, with a possibility that it was earlier yet.

The evidence is clear and satisfactory that neither Richard I. nor King John, whose reigns extended from 1189 to 1216, were guilty of any kind of a debasement of the coinage. On the contrary, they made every effort to maintain its purity, and during the great controversy between John and the barons, which resulted in Magna Charta, June 15, 1215, the latter had no occasion to make, and did not make any complaint of an abuse by the king of his power to coin money.

The greatest monetary transaction of the period was the large payment made by the English to ransom the person of Richard, when he was held in captivity in Germany. Some of the early writers, among them Caxton and Stow, erroneously assumed that the ransom was paid in coined money, instead of a certain weight of silver. This error probably arose from ignorance of the subject, or from carelessness of expression. Ruding says it was "ably refuted by Mr. North," whom he described as "that most able numismatic antiquary," and he quotes from him as follows:

"Stow, in his Chronicles, does indeed tell us that all the plate collected for the redemption of this King was coined into money; but the very nature of the thing shews it to be a mistake. For what necessity of this additional charge to a burthen so heavy of itself? The terms of the composition did not require it; the words of which from Hovedon, a contemporary historian, were, nuntii imperatoris recipient londoniis centum millia marcarum puri argenti ad pondus coloniae: quae pecunia a nuntiis a accepta & ponderata, in conductu regis per regni sui terminos ducetur. This sum was the whole he could ever make any shift to pay, by severe taxes, and even stripping all the churches of their plate,

though he gave hostages for the future payment of 50,000 mark more. Under this general distress of the subject, and poverty of the King, what probability of its being coined at the King's mints, which could have added no value to it with the Emperor, to whom it must be more acceptable in bullion for his own proper mints? Besides, whatever part of it was collected in coin might probably, by the ambassadors, be demanded to be melted down, in order to prove its coming up to the covenanted standard, puri argenti. Therefore, whatever expressions Stow met with to occasion such a notion, they could mean no more, as the learned author of the Historical Account of English Money most judicially observes, than coining in the sense that tin blocks are said to be coined in Cornwall; and perhaps had some stamp like them, to denote their goodness; and in respect may be said to be coined into money, as it answered all the purposes of the money, p. 59; which is the very notion that the words of Polydore Vergil, in his history, convey to us: Praeter caeteras privatos opes, vasa etiam sacra aurea seu argentea ex templis sublata fuerunt; ex quibus multo plus pecuniae conflatum est, quam principio fuerat imperatum. The word *Conflatum* can mean no more than that it was melted down together into bars or ingots. If any part of the ransom was paid in English coins, Germany might be a more likely place to meet with them than England."

While King John was not guilty of any wrong in the coining of money and did everything he could to punish clippers and counterfeiters, he was in other respects, particularly in the taxes he levied and the military services he required the barons and their vassals to render, one of the most arbitrary and tyrannical monarchs that ever sat on the English throne.

He received the support of the temporal barons and of the people in his quarrel with the church, but in the end he was compelled to submit to the See of Rome, to recognize Cardinal Langton, whom the Pope had caused to be elected Archbishop of Canterbury and Primate of England, and to make restitution for the church property he had confiscated.

Stephen Langton was an Englishman who had been educated in France, and had become noted there for his learning and piety. Pope Innocent III. invited him to Rome, and made him a cardinal. He was obtruded on England and his authority was established there, by the power of the church over a superstitious nation, and the

ability and persistency of Innocent III., the greatest of all the Popes; but nevertheless he proved to be a true-hearted Englishman, and in the struggle of the barons with the King, neither the threats of his temporal or spiritual superiors could deter him from the patriotic performance of his duty to his countrymen. To him, more than any other man, the English people are indebted for the Great Charter, which firmly laid the foundations of constitutional liberty, and is the fruitful source of its most enduring principles.

Before Langton would grant absolution to the King, he compelled him to swear that he would abolish all illegal customs, restore the good laws of his predecessors, particularly those of Edward the Confessor, give just and true judgment to all men, and restore to all their rights.

A council was soon afterwards convened at St. Albans, August 4, 1213, at which Geoffrey Fitz-Peter, John's chief justiciar, presided. Fitz-Peter was a man trained in the school of Henry II. under Glanvill and Hubert Walter. He had great influence with the barons, and held them true to the King in his controversy with the church. The chief justiciar was ex-officio regent in the absence of the King, and he presided at this council because John had sailed, or was about to sail, on an expedition against France. As a result of the council, proclamations were issued in the King's name ordering an observance of the laws of Henry I., and denouncing the punishment of death against all sheriffs, officers of the royal forests, and other ministers of the crown who should exceed the strict limits of their authority.

The reference to the laws of Henry instead of those of Edward has been a matter of comment, but it was probably due to the justiciar, and his superior legal learning, and possibly it was made out of deference to the prejudices of some of the Anglo-Norman barons, who may have preferred the name of a Norman law-giver to that of a Saxon one. Whatever the reason, it shows the connection of the Charter and laws of Henry I. with Magna Charta at the very inception of the movement which resulted in the grant by King John of the last named instrument.

Another council of some of the principal barons was held at St. Paul's, London, August 25, 1213, at which the archbishop showed them a copy of the Charter of Henry I. He exhorted them to insist on the renewal and observance of it. The barons swore that they would sooner lose their lives than depart from so reasonable a demand.

The barons clearly saw that the Charter of Henry 1. furnished both a safe standing ground and a precedent for a deliberate scheme of reform.

Fitz-Peter laid the claims of the council before the King, but died almost immediately after. The influence which had stood between the King and the barons was at an end, much to the relief of John, who exclaimed with an oath, that now for the first time he was King of England, little realizing that the death of his faithful servant would soon result in his own discomfiture.

Early in 1214, John went to Poictou and carried war into the dominions of Philip Augustus of France. During his absence the confederacy of the barons spread wider and wider. In response to a summons from Langton they met in large numbers at St. Edmondsbury, under color of devotion. The archbishop "again produced to the assembly the old Charter of Henry; renewed his exhortations of unanimity and vigor in the prosecution of their purpose; and presented in the strongest colors the tyranny to which they had been so long subjected, and from which it now behooved them to free themselves and their posterity."

"The barons, influenced by his eloquence, incited by a sense of their own wrongs, and encouraged by the appearance of their power and numbers, solemnly took an oath, before the high altar, to adhere to each other, to insist on their demands, to make endless war on the King until he should submit to grant them."

"They agreed that after the festival of Christmas, they would prefer in a body their common petition; and in the mean time they separated, after mutually engaging that they would put themselves in a posture of defense, would enlist men and purchase arms, and would supply their castles with the necessary provisions.

"The barons appeared in London on the day appointed, and demanded of the King that, in consequence of their own oath before the primate, as well as in deference to their just rights, he should grant them a renewal of Henry's charter and a confirmation of the laws of St. Edward."

"On the feast of Epiphany, John at the Temple received a deputation from the barons and heard their demands; smothering his indignation, he requested a truce until the first Sunday after Easter. As the time for the King's answer approached, the barons assembled an army at Stamford, and as soon as the truce expired they proceeded to make war on the King. John was at Oxford,

and sent the archbishop and William Marshall to the barons with a message desiring to know what those liberties were which they so zealously challenged from their sovereign. These messengers at once brought back a long schedule of demands, which were no sooner shown the King than he burst into a furious passion and refused to grant them.

The warlike preparations went on, and a decisive battle was about to take place, when the King yielded, and at Runymede, June 15, 1215, agreed to the treaty or grant, known as Magna Charta.

1 Hume's His. Eng., 422-429.
1 Stubbs' Consti. His. Eng., 563-569.
Creasy's Eng. Consti., 98-117.

ARTICLES OF THE BARONS.

These are the articles petitioned for by the barons and granted by the king:

1. After the death of his ancestor the heir being of full age shall succeed to him according to the old custom as expressed in the charter.

2. The heirs who are minors and under guardianship, shall, when they become of age, be vested with their ancestor's estate without charge and burden.

3. The guardian of the heir, after his guardianship has expired, shall transfer to the heir all that belongs to him in its integrity. Should the guardian mismanage or do anything wrong in the discharge of his trust, he shall be held responsible for the same.

The guardian shall keep in good repair the houses, parks, fish ponds, etc., pertaining to the estate; so that the heir or cestui que trust can make an advantageous marriage with the advice of his kindred.

4. The widow shall not pledge her dower right at the death of her husband; but she shall live in the homestead not less than 60 days after her husband's death. After that period, her dower shall be assigned to her and she shall be free to marry again and become seized of her estate.

5. The king nor the sheriff shall not levy on any land so long as the debtor's cattle are sufficient to pay his debt, nor shall the sureties of the debtor be subject to

arrest as long as the capital of the debtor is adequate to his debt. And if the debtor's capital is insufficient to pay his debt, it shall be at the option of his sureties to hold his estate as long as the debt is not paid, unless he can show that he has given his sureties satisfactory guarantees.

6. The king does not yield to any baron the contribution he has a right to from his free men, unless for the purposes of ransom, or when a baron's oldest son is made a knight, or a baron's eldest daughter is to be married, and in such cases a reasonable contribution shall be made.

7. That none shall be bound to military service longer than what is due to the feudal lord.

8. The courts of common plea shall not hold their sessions where the king happens to be, but shall be held at a fixed and certain place, and inquests shall be taken in those courts after this manner: the king shall send two justices to every county four times a year, who, with four knights elected in each county, will hold the session of the court, and that no trial shall be held unless each party to the action is present and the witnesses sworn to.

9. Every free man convicted of a small offense shall be punished according to the character of that offense; and, if convicted of a great crime, he shall be punished accordingly, without regard to the size of his land holdings; the villain shall be punished in the same way, without regard to the area of land he may have ploughed; the merchant also in the same way, without regard to the quantity of his goods, and be tried under the oath of good men of the neighborhood.

10. The men of the clergy shall be punished like others according to the common law, and not according to the benefit of the clergy.

11. No town shall be fined for not building bridges, unless such work was to be done by the town according to some established custom.

12. The wine and corn measures, the size of loaves, and other things shall be reformed as well as weights.

13. The settlements of the esstate of an ancestor and the taking of possession by the successor shall be shortened and so shall be all trials.

14. No sheriff shall control the proceedings in relation to suits by the crown without the participation of the coroners. And no fees shall be charged in the county courts or the hundreds except those pertaining to the royal manor.

15. At the death of any one holding from the king, it shall be in the discretion of the sheriff of the king's bailiff to seize and impound the chattels of such tenant and keep the chattels within sight of the officers of the law so that none can be removed, until it is ascertained whether he owes anything to the king; then, in case of debt, it shall be paid out of the chattels; the rest shall be turned over to the executors of the deceased's tenant to fulfill his last will and testament, but if nothing is due to the king, all the chattels shall be returned to the executors of the deceased.

16. After the death of every free man his property shall be divided amongst his nearest kin and friends, and that shall be done under the supervision of the church.

17. Widows shall not be coerced to marry as long as they wish to remain single; but they shall give bond that they shall not marry without the consent of the king, if they are the king's tenants, or without the consent of the lord of whom they may be tenants.

18. No constable nor any deputy officer shall take possession of crops or chattels without paying spot cash for the same, unless the vendor, by his free will, grants him delay for payment.

19. No constable shall extort money from a soldier for the guard of castles if the soldier is willing to mount guard himself, or, in case he can't reasonably do so, furnish a good substitute; and if a soldier has been in actual service in the army, he shall be exempt from mounting guard for a period equal to that of his army service.

20. No sheriff, nor king's bailiff, nor any other officer shall use the horses or carriages of any free man for his or their own traveling, unless with the consent of the owner or owners thereof.

22. The king shall not hold the land of those convicted of felony for more than one year and one day, after which it shall be conveyed to the feudal lord.

23. All the draining ditches shall be cut so that their common final flow in all England shall be in the Thames or Meddeway.

24. No brief which is called praecipe shall be issued, by which a free man is deprived of a hearing in the court which has the proper jurisdiction over him.

25. If any one has been dispossessed of or removed from his lands without judgment, and against his right and liberty, the same shall be immediately restored to him; and, should there be any room for contest on that fact, it shall be left to the judgment of twenty-five barons, and in order that those who were dispossessed by the father or the brother of the king can have their rights restored without delay, the same shall be adjudicated before a jury of their peers in the king's court. But if they deny the king's court jurisdiction under a signature marked with a cross, then, on a day certain, the archbishops and bishops shall hear the complaints and their judgment shall be without appeal.

26. Writs of inquest in cases of homicide or mayhem shall not be bought; but they shall be freely granted without requiring any price for the same.

27. If any one holds from the king by way of lessee, in soccage or in free soccage and also hold under another for military service; the king shall not have the right to treat that tenant sometimes as his soldier, sometimes as his tenant in soccage and sometimes as his tenant in free soccage; or, treat him as a tenant combining all the tenures above enumerated; but the freeman shall thereby lose his status as a soldier, and being under a particular military tenure while he holds also under other conditions. He shall surrender his sword, his arrows or his weapons to the king.

28. No bailiff shall bring action against any one on his own word; but he must have before this reliable witnesses.

29. That no freeman shall be arrested, dispossessed, exiled or otherwise molested, or that the king shall deprive him of his liberty only after a trial before his peers or according to the law of the land.

30. Judgments shall not be sold, compounded or interfered with.

31. Merchants shall have the right of egress and ingress in buying and selling; untrameled by the old vexations and onerous customs that have heretofore prevailed.

32. No tribute shall be levied in the kingdom for the purpose of ransoming the king or for the knighthood of his eldest son or the marriage of his eldest daughter; but a reasonable sum shall freely be allowed to that end. In the same manner shall the taxes and charges be levied in the City of London and the other free cities; and the City of London shall have the enjoyment of all its ancient rights and customs, both on land and water.

33. Every person shall have the right to come in and go out of the kingdom without the permit of the king; unless in time of war, when that right can be suspended for a short time and for the public good.

34. If any one has borrowed from the Jews more or less and he dies before the debt is paid, the debt shall not bear interest as long as the debtor's heir is a minor; and if such a debt or claim should be assigned to the king, no more chattels than a cart can hold shall be attached.

35. If any one dies being a debtor of Jews, his wife shall retain her dower and his surviving children shall be provided with the necessaries of life according to the value of the estate, and the residue of the estate shall be applied to pay that debt and shall be free of feudal servitude or charges; in the same manner shall other debts be paid, and when the heir becomes of age the guardian shall convey to him the land in as good a condition as that land could yield if well ploughed.

36. After the death of a tenant of escheated land such as held from Nottingham and Lancaster, and also of other escheated lands held partly by the king and partly by barons, his heir shall not pay any more taxes to nor do any other service for the king than used to be paid to and done for a baron; and the king shall hold the land in the same manner it was held by a baron.

37. The fees which have been unjustly and against the law exacted in settlements of dowers, the performances of marriages, the apportionment of inheritances and in the levying of fines, shall be remitted; and such claims and grievances shall be heard before twenty-five barons, or before a majority of the twenty barons and one archbishop in such a manner that if a baron or some of the barons are interested in the matter to be heard, he or they shall be incompetent to act as judges and a change of venue shall take place.

38. The hostages who were given as sureties for peace shall be surrendered.

39. Those who are beyond the jurisdiction of the forest court shall not be called before the judges of the forest court by common summons, unless they are joint parties in the matter or are sureties; and in order to put an end to the evil practices of the forest courts and game wardens, of the warreners, of the sheriffs and fish wardens, a jury of twelve knights shall be constituted in every county and they shall be chosen amongst the good men of each county.

40. The king shall entirely remove from their bailiwick the relatives and all the followers of Gerard and Atxes, and they shall be given no other bailiwick; and, of course, the king shall also remove from their bailiwicks the Engelards, Andrew and Peter, and William of Kent, William of Cxgoniis, Matthew De Martiny and his brother, Cyalfrid, his nephew and Phillipp Mark.

41. The king shall expel the foreign knights and archers, mercenaries and serjeants who with their arms and horses come to disturb the kingdom.

42. The king shall choose the judges, constables, sheriffs and bailiffs amongst those who are familiar with the law of the land and willing to observe it.

43. The barons who had founded abbeys shall have the royal charters thereof and shall have their custody when the abbeys become vacant.

44. If the King of Wales should have dispossessed any one of his lands or deprived him of his rights, whether in England or in Wales, the same shall be immediately redressed, and if any one has been dispossessed of his property in England by the father or brother of the king without the judgment of his peers, the king will make known such facts without delay; and justice shall be rendered according to the laws of England; and in case of property in Wales, according to the law of Wales.

45. The king shall release the son of Lervel (Lervelini) and all the Welch hostages and receive from them bonds for the keeping of the peace.

46. The hostages shall be released to the king of the Scots; and he, the king of the Scots, shall have the same rights and liberties as the English barons; unless otherwise stipulated by the charters that the said king may have, and then he shall be dealt with according to the judgment of an archbishop and the persons the latter may call upon to advise him.

47. All the forests of the kingdom which have been put under servitude by the king during his own reign shall be released, and the prohibited streams shall become free again.

48. The king shall keep on his part all the laws, customs and liberties which he grants; and all persons in the kingdom, whether of the clergy or the laity, shall also on their part observe them.

This is the form of guarantee to observe the liberties and keep the peace between the king and the kingdom.

The barons are to elect twenty-five barons by the kingdom and, with their consent, and then the barons so elected shall, in all their power, cause to be observed and kept the rights and liberties which the king grants and are confirmed by the charter. If the king, a judge, a bailiff or any other officer of the king violates any article of the charter and the offense is called to the attention of four of the twenty-five barons, those four barons shall go to the king, or if he is out of the kingdom, to his minister, and then they shall lay before him or his minister the delict or trespass complained of and petition for its redress without delay. If the king or his minister should not redress the delict, and if the king remains out of the kingdom longer than the time prescribed in the charter, the four barons shall refer the case to the remainder of the twenty-five barons, and the twenty-five barons with the other organized property holders in the kingdom shall distrain from and aggrieve the king in all the ways in their power, such as by the seizure of his cattles, the attachment of his lands and goods, till the delict has been redressed, according to the judgment of the barons though the person of the king, the queen and their children shall remain inviolable. When the delict shall have been so redressed, the barons shall come before the king, and whoever wishes to testify shall be summoned before the barons to say under oath how he participated with the barons in aggrieving the king, as above referred to, and the king shall grant license to any one to testify, and none shall be prohibited from so doing. As to those who shall refuse to tell under oath of their participation with the barons in distraining from and molesting the king, it shall be the power of the king under his own mandate to have them sworn to.

At the death of any one of the twenty-five barons, or his departure from the kingdom, or if otherwise any of them becomes incapacitated, the rest of the barons shall select his successors, who shall be sworn in the same man-

ner as the other barons. In all the matters which shall be submitted to the barons, in case of their disagreement or in case some refuse to act, a vote shall be taken and the decision of the majority shall have the same effect as if it had been that of all the twenty-five barons. The said twenty-five barons shall make oath that they shall faithfully observe and cause to be observed all that which is hereinbefore recited.

The king shall secure them by charters from the archbishops, bishops and the sovereign pontiff; that the Pope shall not interfere with any of the rights and liberties heretofore granted and that any act to the effect of limiting or abolishing such rights and liberties shall be absolutely null and void.

The extent to which the grievances of the barons were summarized, itemized and particularized in the foregoing articles is itself conclusive evidence that they had no grievances in regard to the coinage. The barons had had no power to coin money since the destruction of the adulterine castles; and neither Henry II., or Richard I., or John, had debased the coin; nor had they exacted any moneyage or other tax, or commutation for not doing so. The national policy in this regard had been settled by the charter of Henry I., the provisions of the treaty of Wallingford for a good coinage, and the uniform compliance with that policy by each succeeding sovereign.

No specific demand relative to the coinage is set forth in the articles, or in the charter as granted; but we are not to assume that the prerogative of the crown to coin money was, therefore, left unrestrained and untrammeled by that famous instrument.

The occasion did not call for a specific provision, and the subject was therefore left to be controlled by certain of the general provisions and requirements demanded by the barons and assented to by the king.

These will be examined and considered in the next subdivision of this brief.

II.

The general principles of constitutional government prescribed by Magna Charta prohibit any debasement, enchancement, or alteration of the weight or fineness of the coinage, from being made applicable to pre-existing contracts for the payment of money.

The great charter is undoubtedly worthy of all the encomiums that have been uttered in its honor. The constitutional history of England and America is not much more than a commentary upon it. For convenience of reference, we here insert it in full, placing the clauses to which we desire to call particular attention in italics.

MAGNA CHARTA.

John, by the grace of God King of England, Lord of Ireland, Duke of Normandy, Aquitaine, and Count of Anjou, to his Archbishops, Bishops, Abbots, Earls, Barons, Justiciaries, Foresters, Sheriffs, Governors, Officers, and to all Bailiffs, and his lieges, greeting: Know ye, that we, in the presence of God, and for the salvation of our soul, and the souls of all our ancestors and heirs, and unto the honor of God, and the advancement of Holy Church, and amendment of our Realm, by advice of our venerable Fathers, Stephen, Archbishop of Canterbury, Primate of all England and Cardinal of the Holy Roman Church, Henry, Archbishop of Dublin, William of London, Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, Bishops; of Master Pandulph, Sub-Deacon and Familiar of our Lord the Pope, Brother Aymeric, Master of the Knights-Templars in England; and the Noble Persons, William Marescall, Earl of Pembroke, William, Earl of Salisbury, William, Earl of Warren, William, Earl of Arundel, Alan De Galloway, Constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, and Hubert De Burgh, Seneschal of Poitou, Hugh De Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip of Albiney, Robert De Roppell, John Mareschal, John Fitz Hugh, and others our liegemen, have, in the first place, granted to God, and by this our present charter confirmed, for us and our heirs forever:

1. That the Church of England shall be free, and have her whole rights, and her liberties inviolable; and we will have them so observed, that it may appear thence, that the freedom of elections, which is reckoned chief and indispensable to the English Church, and which we granted and confirmed by our charter, and obtained the confirmation of the same from our Lord the Pope Innocent III., before the discord between us and our barons, was granted of mere free will; which charter we shall observe, and we do will it to be faithfully observed by our heirs forever.

2. We also have granted to all the freemen of our kingdom, for us and for our heirs forever, all the underwritten liberties, to be had and holden by them and their heirs, of us and our heirs forever: If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owes a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.

3. But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

4. The keeper of the land of such an heir being under age, shall take of the land of the heir none but reasonable issues, reasonable customs, and reasonable services, and that without destruction and waste of his men and his goods; and if we commit the custody of any such lands to the sheriff, or any other who is answerable to us for the issues of the land, and he shall make destruction and waste of the lands, which he hath in custody, we will take of him amends, and the land shall be committed to two lawful and discreet men of that fee, who shall answer for the issues to us, or to him to whom we shall assign them; and if we sell or give to any one the custody of any such lands, and he therein make destruction or waste, he shall lose the same custody, which shall be committed to two lawful and discreet men of that fee, who shall in like manner answer to us as aforesaid.

5. But the keeper so long as he shall have the custody of the land, shall keep up the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out

of the issues of the same land; and shall deliver to the heir, when he comes of full age, his whole land, stocked with plows and carriages, according as the time of wainage shall require, and the issues of the land can reasonably bear.

6. Heirs shall be married without disparagement, and so that before matrimony shall be contracted those who are near in blood to the heir shall have notice.

7. A widow, after the death of her husband, shall forthwith and without difficulty have her marriage and inheritance; nor shall she give anything for her dower, or her marriage, or her inheritance, which her husband and she held at the day of his death; and she may remain in the mansion house of her husband forty days after his death, within which term her dower shall be assigned.

8. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband; but yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord of whom she holds, if she hold of another.

9. Neither we nor our bailiffs shall seize any land or rent any for debt, so long as the chattels of the debtor are sufficient to pay the debt; nor shall the sureties of the debtor be distrained so long as the principal debtor is sufficient for the payment of the debt; and if the principal debtor shall fail in the payment of the debt, not having wherewithal to pay it, then the sureties shall answer the debt; and if they will they shall have the lands and rents of the debtor, until they be satisfied for the debt which they paid for him, unless the principal debtor can show himself acquitted thereof against the said sureties.

10. If any one have borrowed anything of the Jews, more or less, and die before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold; and if the debt fall into our hands we will only take the chattel mentioned in the deed.

11. And if any one shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age they shall have necessaries provided for them, according to the tenement of the deceased; and out of the residue the debt shall be paid, saving however the service due to the lords; and in like manner shall it be done touching debts due to others than the Jews.

12. *No scutage or aid shall be imposed in our kingdom, unless by the general council of our kingdom; except for ransoming our person, making our eldest son a knight, and once for marrying our eldest daughter; and for these there shall be paid a reasonable aid. In like manner, it shall be concerning the aids of the City of London* (2).

13. And the City of London shall have all its ancient liberties and free customs, as well by land as by water: furthermore, we will and grant, that all other cities and boroughs, and towns and ports, shall have all their liberties and free customs.

14. And for holding the general council of the kingdom concerning the assessment of aids, except in the three cases aforesaid, and for the assessing of scutages, we shall cause to be summoned the archbishops, bishops, abbots, earls, and greater barons of the realm, singly by our letters. And furthermore, we shall cause to be summoned generally by our sheriffs and bailiffs, all others who hold of us in chiefs, for a certain day, that is to say, forty days before their meeting at least, and to a certain place; and in all letters of such summons we will declare the cause of such summons. And summons being thus made, the business of the day shall proceed on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

15. We will not for the future grant to any one that he may take aid of his own free tenants, unless to ransom his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall only be paid a reasonable aid.

16. No man shall be distrained to perform more service for a knight's fee, or other fee tenement, than is due from thence.

17. Common pleas shall not follow our court, but shall be holden in some place certain.

18. Assizes of novel disseisin, and of mort d'ancestor, and of darrien presentment, shall not be taken but in their proper counties, and after this manner: We, or, if we should be out of the realm, our chief justiciary, shall send two justiciaries through every county four times a year, who, with four knights, chosen out of every shire by the people, shall hold the said assizes, in the county, on the day, and at the place appointed.

19. And if any matters cannot be determined on the day appointed for holding the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid, shall stay to decide them, as is necessary, according as there is more or less business.

20. A freeman shall not be amerced for a small fault, but after the manner of the fault; and for a great crime according to the heinousness of it, saving to him his contentment; and after the same manner a merchant, saving to him his merchandise. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy; and none of the aforesaid amerciaments shall be assessed but by the oath of honest men in the neighborhood.

21. Earls and barons shall not be amerced, but by their peers, and after the degree of the offense.

22. No ecclesiastical person shall be amerced for his lay tenement, but according to the proportion of the others aforesaid, and not according to the value of his ecclesiastical benefice.

23. Neither a town nor any tenant shall be distrained to make bridges or banks, unless that anciently and of right they are bound to do it.

24. No sheriff, constable, coroner, or other our bailiffs, shall hold pleas of the crown.

25. All counties, hundreds, wapentakes, and tythings, shall stand at the old rents, without any increase, except in our demesne manors.

26. If any one holding of us a lay-fee die, and the sheriff, or our bailiffs, show our letters patent, of summons for debt which the dead man did owe to us, it shall be lawful for the sheriff or our bailiff to attach and enroll the chattels of the dead, found upon his lay-fee, to the value of the debt, by the view of lawful men, so as nothing be removed until our whole clear debt be paid; and the rest shall be left to the executors to fulfil the testament of the dead, and if there be nothing due from him to us, all the chattels shall go to the use of the dead, saving to his wife and children their reasonable shares.

27. If any freeman shall die intestate, his chattels shall be distributed by the hands of his nearest relations and friends, by view of the church; saving to every one his debts which the deceased owed him.

28. No constable or bailiff of ours shall take corn or other chattels of any man, unless he presently give him money for it, or hath respite of payment by the good-will of the seller.

29. No constable shall distrain any knight to give money for castle guard, if he himself will do it in his person, or by another able man in case he cannot do it through any reasonable cause. And if we lead him, or send him in an army, he shall be free from such guard for the time he shall be in the army by our command.

30. No sheriff or bailiff of ours, or any other, shall take horses or carts of any freeman for carriage, but by the good-will of the said freeman.

31. Neither shall we nor our bailiffs take any man's timber for our castles or other uses, unless by the consent of the owner of the timber.

32. We shall retain the lands of those convicted of felony only one year and a day, and then they shall be delivered to the lord of the fee.

33. All wears for the time to come shall be put down in the river of Thames and Medway, and throughout all England, except upon the sea coast.

34. The writ which is called praecipe, for the future, shall not be made out to any one, of any tenament, whereby a freeman may lose his court.

35. *There shall be one measure of wine and one of ale through our whole realm; and one measure of corn, that is to say, the London quarter; and one breadth of dyed cloth, and russets, and haberjects, that is to say, two ells within the lists; and it shall be of weights as it is of measures* (1).

36. Nothing from henceforth shall be given or taken for a writ of inquisition of life or limb, but it shall be granted freely, and not denied.

37. If any do hold of us by fee-farm, or by soccage, or by burgage, and he hold also lands of any other by knight's service, we will not have the custody of the heir or, land, which is holden of another man's fee by reason of that fee-farm, soccage, or burgage; neither will we have the custody of such fee-farm, soccage or burgage, except knight's service was due to us out of the same fee-farm. We will not have the custody of an heir, nor of any land which he holds of another by knight's service,

by reason of any petty serjeanty that holds of us, by the service of paying a knife, an arrow, or the like.

38. No bailiff from henceforth shall put any man to his law upon his own bare saying, without credible witnesses to prove it.

39. Nullus liber homo capiatur, vel imprisonetur, aut utlagetur, aut exuletur, aut aliquo modo destruatur; nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae.

40. Nulli vendemus, nulii negabimus, aut differemus rectum aut justitiam.

39. *No freeman shall be taken or imprisoned, or dissezed, or outlawed, or banished, or any ways destroyed, nor will we pass upon him, nor will we send upon him, unless by the lawful judgment of his peers, or by the law of the land* (3).

40. *We will sell to no man, we will not deny to any man, either justice or right.*

41. All merchants shall have safe and secure conduct, to go out of, and to come into England, and to stay there, and to pass as well by land, as by water, for buying and selling by the ancient and allowed customs, without any evil tolls; except in time of war, or when they are of any nation at war with us. And if there be found any such in our land, in the beginning of the war, they shall be attached, without damage to their bodies or goods, until it be known unto us or our chief justiciary, how our merchants be treated in the nation at war with us; and if ours be safe there, the others shall be safe in our dominions.

42. It shall be lawful, for the time to come, for any one to go out of the kingdom, and return safely and securely, by land or by water, saving his allegiance to us; unless in time of war, by some short space, for the common benefit of the realm, except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above mentioned.

43. If any man hold of any escheat, as of the honor of Walingford, Nottingham, Boulogne, Lancaster, or of other escheats which be in our hands, and are baronies, and die, his heir shall give no other relief and perform no other service to us, than he would to the baron, if it were

in the baron's hand; we will hold it after the same manner as the baron held it.

44. Those men who dwelt without the forest, from henceforth shall not come before our justiciaries of the forest, upon common summons, but such as are impleaded, or are pledges for any that are attached for something concerning the forest.

45. *We will not make any justices, constables, sheriffs, or bailiffs, but as such as know the law of the realm and mean duly to observe it* (4).

46. All barons who have founded abbeys, and have the kings of England's charters of avowson, or the ancient tenure thereof, shall have the keeping of them, when vacant, as they ought to have.

47. All forests that have been made forests in our time, shall forwith be disforrested; and the same shall be done with the banks that have been fenced in by us in our time.

48. All evil customs concerning forests, warrens, foresters and warreners, sheriffs and their officers, rivers and their keepers, shall forwith be inquired into in each county, by twelve sworn knights of the same shire, chosen by creditable persons of the same county; and within forty days after the said inquest, be utterly abolished, so as never to be restored: so as we are first acquainted therewith, or our justiciary, if we should not be in England.

48. We will immediately give up all hostages and writings delivered unto us by our English subjects, as securities for their keeping the peace, and yielding us faithful service.

50. We will entirely remove from our bailiwicks the relations of Gerard De Atheyes, so that for the future they shall have no bailiwick in England; we will also remove Engelard De Cygony, Andrew, Peter, and Gyon, from the Chancery; Gyon de Cygony, Geoffrey de Martyn and his brothers; Philip Mark, and his brothers, and his nephew, Geoffrey, and their whole retinue.

51. As soon as peace is restored, we will send out of the kingdom all foreign soldiers, cross-bowmen, and stipendiaries, who are come with horses and arms to the prejudice of our people.

52. If any one has been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles, liberties, or right, we will forthwith restore them to him; and if any dispute arise upon this head, let the matter be decided by five and twenty barons hereafter mentioned, for the preservation of the peace. As for all those things of which any person has, without the legal judgment of his peers, being dispossessed or deprived, either by King Henry our father, or our brother King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite till the term usually allowed the crusaders; excepting those things about which there is a plea depending, or whereof an inquest hath been made, by our order, before we undertook the crusade, but when we return from our pilgrimage, or if perchance we tarry at home and do not make our pilgrimage, we will immediately cause full justice to be administered therein.

53. The same respite we shall have (and in the same manner about administering justice, disafforesting the forests, or letting them continue) for disafforesting the forests, which Henry, our father, and our brother Richard have afforested; and for the keeping of the lands which are in another's fee, in the same manner as we have hitherto enjoyed those wardships, by reason of a fee held of us by knight's service; and for the abbeys founded in any other fee than our own, in which the lord of the fee says he has a right; and when we return from our pilgrimage we will immediately do full justice to all the complainants in this behalf.

54. No man shall be taken or imprisoned upon the appeal of a woman for the death of any other than her husband.

55. All unjust and illegal fines made by us, and all amerciaments imposed unjustly and contrary to the law of the land, shall be entirely given up, or else be left to the decision of the five and twenty barons hereafter mentioned for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him; but so that if one or more of the aforesaid five and twenty barons be plaintiffs in the same cause, they shall be set aside as to what concerns this particular affair, and others be chosen in their room, out

of the said five and twenty, and sworn by the rest to decide the matter.

56. If we have disseised or dispossessed the Welsh of any lands, liberties, or other things, without the legal judgment of their peers, either in England or in Wales, they shall be immediately restored to them; and if any dispute arise upon this head, the matter shall be determined in the marche by the judgment of their peers; for tenements in England according to the law of England, for tenements in Wales according to the law of Wales, for tenements of the marche according to the law of marche; the same shall the Welsh do to us and our subjects.

57. As for all those things which a Welshman hath, without the legal judgment of his peers, been disseised or deprived of by King Henry, our father, or our brother, King Richard, and which we either have in our hands, or others are possessed of, and we are obliged to warrant it, we shall have a respite until the time generally allowed the crusaders; excepting those things about which a suit is depending, or whereof an inquest has been made by our order, before we undertook the crusade; but when we return, or if we stay at home without performing our pilgrimage, we will immediately do them full justice, according to the laws of the Welsh and of the parts before mentioned.

58. We will without delay dismiss the son of Llewellin, and all the Welsh hostages, and release them from the engagements they have entered into with us for the preservation of the peace.

59. We will treat with Alexander, King of the Scots, concerning the restoring his sisters and hostages, and his right and liberties, in the same form and manner, as we shall do to the rest of our barons of England; unless by the charters which we have from his fathers, William, late King of Scots, it ought to be otherwise; but this shall be left to the determination of his peers in our court.

60. All the aforesaid customs and liberties, which we have granted to be holden in our kingdom, as much as it belongs to us, towards our people of our kingdom, as well clergy as laity shall observe, as far as they are concerned, towards their dependents.

51. And whereas, for the honor of God and the amendment of our kingdom, and for the better quieting the dis-

cord that has arisen between us and our barons, we have granted all these things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the underwritten security, namely, that the barons may choose five and twenty barons, of the kingdom, whom they think convenient; who shall take care, with all their might, to hold and observe, and cause to be observed, the peace and liberties we have granted them, and by this our present charter confirmed; so that if we, our judiciary, our bailiffs, or any of our officers, shall in any circumstance fail in the performance of them, towards any person, or shall break through any of these articles of peace and security, and the offense be notified to four barons chosen out of the five and twenty before mentioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and, laying open the grievance, shall petition to have it redressed without delay; and if it be not redressed by us, or if we should chance to be out of the realm, if it should not be redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our judiciary (if we should be out of the realm), the four barons aforesaid shall lay the cause before the rest of the five and twenty barons; and the said five and twenty barons, together with the community of the whole kingdom, shall distrain and distress us in all possible ways, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person, and the persons of our queen and children; and when it is redressed, they shall obey us as before. And any person whatsoever in the kingdom, may swear that he will obey the orders of the five and twenty barons aforesaid, in the execution of the premises, and will distress us, jointly with them, to the utmost of his power; and we give public and free liberty to any one that shall please to swear to this, and never will hinder any person from taking the same oath.

62. As for all those of our subjects who will not, of their own accord, swear to join the five and twenty barons in distraining and distressing us, we will issue orders to make them take the same oath as aforesaid. And if any one of the five and twenty barons dies, or goes out of the kingdom, or is hindered any other way from carrying the things aforesaid into execution, the rest of the said five and twenty barons may choose another in his room, at their discretion, who shall be sworn in like

manner as the rest. In all things that are committed to the execution of these five and twenty barons, if, when they are all assembled together, they should happen to disagree about any matter, and some of them, when summoned, will not, or cannot, come, whatever is agreed upon, or enjoined, by the major part of those that are present, shall be reputed as firm and valid as if all the five and twenty had given their consent; and the aforesaid five and twenty shall swear, that all the premises they shall faithfully observe, and cause with all their power to be observed. *And we will not, by ourselves, or by any other, procure anything whereby any of these concessions and liberties may be revoked or lessened; and if any such thing be obtained, let it be null and void; neither shall we ever make use of it, either by ourselves or any other.* (5) And all the ill will, indignations, and rancours that have arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive: moreover, all trespasses occasioned by the said dissensions, from Easter in the 15th year of our reign, till the restoration of peace and tranquility, we hereby entirely remit to all, both clergy and laity, and as far as in us lies do fully forgive. We have, moreover, caused to be made for them the letters patent testimonial of Stephen, lord archbishop of Canterbury, Henry, lord archbishop of Dublin, and the bishops aforesaid, as also master Pandulph, for the security and concessions aforesaid.

63. Wherefore we will and firmly enjoin, that the Church of England be free, and that all the men in our kingdom have and hold all the aforesaid liberties, rights, and concessions, truly and peaceably, freely and quietly, fully and wholly to themselves and their heirs, of us and our heirs, in all things and places, forever, as is aforesaid. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall be observed bona fide and without evil subtility. Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Runingmede, between Windsor and Staines, the 15th day of June, in the 17th year of our reign.

COMMENTS.

(1). We desire to first call attention to the provisions of the charter for a uniform system of weights and measures for the whole realm. Paragraph 35.

As the money current in England passed by weight and not by tale, the system of weights had an all-important relation to the coinage. The art of coining money as we have shown was in an imperfect state. The coins were made equal in weight by shears. Milled coins were then unknown. But with the assurance furnished by the settled policy of the crown to keep the coinage as good as sterling in quality, there could be no very great inconvenience even in small transactions, if the weights in general use were uniform and honest.

The framers of the constitution of the United States took the same care of the subject, for the very clause of the constitution conferring power on Congress to coin money and regulate the value thereof also confers the power to "fix the standard of weights and measures."

If the king in England had been left with the power to alter the standard of weights and measures at his will or pleasure all other guarantees of Magna Charta would have been worthless.

(2). Thus the provision of the twelfth paragraph that taxes should not be levied except by consent of the general council of the nation, could have been easily evaded, if after a general council had consented to a tax, payable either in commodities or in money, the king had power to increase the tax by making a retroactive change in the system of weights and measures, or in the coinage.

That Archbishop Langton, and the barons he so successfully led, understood that such a power was reserved to the king as a part of his prerogative to coin money, is antagonistic to everything he and they did, and to the most important demands made by them.

The plain, unvarnished truth is, that with such a power vested in the sovereign authority, whether that authority be King or Parliament, President or Congress, there could be no such thing as constitutional government. The whole fabric of representative taxation, and popular institutions, could be swept away by it.

(3). We now come to the Bible of the Great Charter, to the 39th paragraph, which provides in substance as it

came to be expressed in the Petition of Right, and in American Constitutions, that, "no person shall be deprived of life, liberty or property without due process of law."

In Vol. 1, p. 61, we have referred to the controversy which led to the use of the words, "due process of law," instead of "law of the land;" but it is very doubtful whether the substituted words are any better or more comprehensive than the original ones.

If the right to life, liberty and property was to be governed by law, as distinguished from the arbitrary power of the sovereign authority, there can be no question but that any action taken, or statute enacted, which would transfer without compensation the property of A to B would have been regarded at the time the charter was granted as a violation of this provision, which has come down to us, unimpaired, through seven hundred years of constitutional controversy.

The mind of man cannot conceive of a more direct way of transferring the property of one man to another than to change the standard of the weights and measures, or of the coinage, and to make the change apply to contracts previously entered into.

An executory contract may at the present time be expressed in three different ways in the United States, and still be of the same import as between the parties to it.

Thus: A agrees in three different contracts to deliver to B at a certain time and place:

1. One dollar.
2. 25.8 grains Troy of gold .900 fine.
3. 23.22 grains Troy of pure gold.

Can Congress possibly have any greater power over contracts like No. 1 than it has over those like No. 2 and No. 3? Has it any more power over contracts payable in money than it has over those payable in commodities? Could it change all of these three classes of contracts by amending Sec. 3548 of the Rev. Stat. so that as to all past or future contracts, the Troy pound should be one half (or double) the weight of the brass troy pound from London mentioned in that section, and that the section as amended should apply to all contracts expressed in money or coin, or for the delivery of commodities by Troy weight?

Any such distinction as to the power of the sovereign authority would be reductio ad absurdum, and abhorrent to every sense of right and justice possessed by mankind.

We respectfully submit that Congress has no more power over executory contracts payable in dollars, dimes

and cents, than it has over contracts payable in tons, pounds, ounces and grains, or in bushels, pecks, quarts and pints.

(4.) The barons and those holding under them had suffered from the arbitrary and despotic action of the king, and his councilors, and it was necessary to include in the scheme for reform some plan to secure the observance of the limitations imposed on the royal authority by the charter.

If the government was to be one of law instead of the arbitrary will of the king, an independent and capable judiciary was absolutely essential. Attempting to secure this, the barons insisted that the officers clothed with judicial power should be chosen by the king from among those who were learned in the law and willing to observe it. Here we have the germs of the judicial systems which exist in England and the United States at the present time. The essential principles of these systems were as clearly laid down in the charter as at any subsequent time.

1. Judges trained in the law, that is, knowing it, or capable of ascertaining it.

2. An official obligation on the part of the judges to declare and enforce the law as they find it to be.

The judicial history of England shows us that the high ideals set up by the Great Charter were very difficult to attain. The judges were too frequently subservient to the royal authority. To those who withstood the blandishments and intimidations of the crown, we can not pay too high a tribute.

(5.) The barons, however, did not place their sole reliance for a government of law on a learned judiciary. The power conferred by the 61st and 62d paragraphs of the charter, on the five and twenty barons, to be chosen by the general body of the barons, went so far as to authorize them to make war on the king if he should violate the charter. The charter expressly provided that if the king himself, or by any other, should procure anything whereby the concessions and liberties granted should be lessened or any such thing should be obtained, that it should be null and void.

It was not until the Constitution of the United States was adopted, establishing a Federal Supreme Court, with power to declare the conduct or acts of the other departments of the government unconstitutional, and void, that this clause of Magna Charta reached its full force and effect.

It is to be regretted that the five and twenty barons did not in the subsequent struggles over the charter develop into a court, with power to declare acts and doings of the king and his council a violation of the charter and therefore null and void.

A judicial tribunal possessed of this high prerogative or jurisdiction was evolved in America from the royal charters granted to the colonies, and the exercise by the Privy Council on appeal, of the power to declare legislative acts of the colonial assemblies contrary to the charters and to the laws of England and therefore void.

See account of the case of Winthrop vs. Lechmere, decided on appeal from Connecticut in 1727, in Coxes' Judicial Power and Unconstitutional Legislation, p. 208.

It is a pleasure and a profit to know that the germs of the Supreme Court of the United States as well as the great principles of constitutional government it is so frequently called upon to expound are to be found in Magna Charta.

III.

The coinage history of England from Magna Charta to the present day shows that the sovereign authority has never constitutionally exercised the power to impair contracts by altering the coinage or the standard of weights and measures.

The evidence submitted in the first volume of this brief, pp. 37-127, is conclusive; but we desire to submit the following additional proofs.

Ruding, in his Annals of the Coinage of Great Britain, gives a carefully prepared account of the coinage in each reign from William I. to the commencement of the reign of Victoria.

In 1205, ten years before Magna Charta, regulations of the coinage, were promulgated by King John. This is Ruding's account of them.

"On the 9th of November, in his sixth year, proclamation was ordered to be made that no one, after the Feast of St. Hilary in the next year, should receive, or have in his possession clipped money. And if after that time, such should be found upon man or woman, being inhabitants of a borough, it should be seized, and bored through, and put into a chest to be kept for the king's use, and the man or woman to be held by sufficient bail, and their chattels to be attached at the king's pleasure.

If such money were found in the hands of a Jew or Jewess, it should be seized, and put into a chest, and the body of the Jew or Jewess, and their chattels, should be taken, and held in replevin, until the king's order to the contrary.

Should such money be found in the hands of a servant, inferior tenant, or peasant, it should be seized, bored, and returned to him from whom it was taken.

Four men were appointed in every borough, etc., wherever a market was held, who were to be sworn to be faithful to the king, and then they were to take the said money, and, having bored it, to place it in the chest, under their seals, and the seal of the parson, or of their bailiff, or of both, to be kept to the king's use.

In the same year, on the 26th of January, an assize was made for the preservation of the money, and for the put-

ting an end to clipping and counterfeiting. William de Wrotham and Reginald de Cornehull were appointed to carry this assize into execution throughout the realm. By its provisions that old money was to be current which wanted at the utmost two shillings and six pence to the pound; and those pennies which were more deficient were to be bored through, and returned, as it had been otherwise provided.

The Jew goldsmiths and foreign merchants were, however, allowed to purchase food and clothes with the light money, but they were not to lend nor to merchandise with any other coins but those which were large and weighty, as the penny sterling legally ought to be. And for the discovery of this lack of weight in the money there was issued, from the mint-office, a penny poize, wanting one-eighth of a penny, to be delivered to any one who would have it, to be used until Easter in the next year. If any of the pennies which should be made after Christmas in the sixth year of the king should be found clipped in any person's hands, then they were to be bored through, and he in whose possession they were taken was to be attached as a thief.

The re-blanching of the old pennies was forbidden; and whoever should be guilty of that crime was declared to be at the king's mercy for all his goods, and was likewise to forfeit all that he had re-blanched. It was declared that a penny should be hereafter made of just standard, with an outer circle, beyond which nothing should appear; and whenever it was found in any other state than that, the maker and clipper of it should be at the king's mercy for all his chattels.

If any person should exchange penny or silver in any other place than the king's exchange (with reserve of the Archbishop's exchange at Canterbury), both the exchanger and receiver should suffer imprisonment. And it was ordained that no one should take for the exchange of a pound of fine and pure silver more or less than sixpence by law:—

That no penny should issue from the king's mint, or from that of Archbishop of Canterbury, except it were legalis de vinteulor:—

That inquiry should be made by free and lawful men, in cities, burgs, and vills, whether any one, either Christian or Jew, did clip the money; and if any clipper should be found, whether Christian or Jew, all his goods should be seized, and his body committed to the king's prison, to be at his pleasure, that justice might be done.

And if any money not of lawful weight should be found in the hands of a Jew goldsmith, or of a merchant, whether foreigner or stranger, for the purpose of merchandizing, or of lending upon use, it was ordained that they, in whose hands such were found (not being intended for the buying of their victuals or clothing, as aforesaid), should be attached."

1 Ruding, p. 178.

The foregoing is a fair sample of efforts made in each succeeding reign to keep the coin of England good.

The struggle was between the crown and the criminal classes who persisted in clipping and counterfeiting the coins. Except in the single instance of the Tudor debasement immediately preceding the reign of Elizabeth, the crown made no attempt to debase the coinage.

TRIALS OF THE PYX.

In order to be assured that the coinage was kept to the standard, the public ceremony of trials of the pyx were instituted. An abstract of the Pyx Verdicts from 1603 to 1818 by Mr. Pollet, will be found in the 2d vol. of the 3d edition of Ruding, p. 456-463. These verdicts show that the coins were as good or better than the standard, at most of the trials, and that when they were worse, they were only slightly so.

At one trial, Nov. 19, 1604, the silver coins were found deficient in quality to the extent of one penny weight to the pound in weight, viz: .004166 per cent. In all the other cases of wantage, and they were few in number, the percentage was less.

The great care shown by these trials is proof that the quality of the coinage was regarded as of the very highest importance.

Regular trials of the pyx have taken place in England since the reign of Edward VII began; and the Rev. Stat. U. S. Sec. 3547 provides for annual tests by assay commissioners, with a view "to secure a due conformity in the gold and silver coins to their respective standard of fineness and weight."

The following table shows the fineness of the silver coins of England from the earliest times, long before the conquest, down to the present day, the object being to show the course of the Tudor debasement, the efforts for

reform in the reigns of Edward VI and Mary, and the final full return to the old standard in the first year of the reign of Elizabeth.

Table showing fineness of English silver coins:

Reign and Year.	Fine. Oz.	Fine. Dwt.	Alloy. Oz.	Alloy. Dwt.
From earliest times to				
28 Edward I (1300)	11	2	0	18
34 Henry VIII (1543)	10	0	2	0
36 Henry VIII	6	0	6	0
37 Henry VIII	4	0	8	0
1 Edward VI (1547)	4	0	8	0
2 Edward VI	4	0	8	0
3 Edward VI	6	0	6	0
4 Edward VI	3	0	9	0
5 Edward VI	3	0	9	0
6 Edward VI	11	1	0	19
1 Mary (1553)	11	1	0	19
1 Elizabeth (1558)	11	2	0	18

1 Ruding, p. 10.

Table showing the number of pounds, shillings and pence coined from one pound of sterling silver:

Reign and Year.	Pound Weight Coined Into Pounds.	Shillings.	Pence.
28 Edward I (1300)	1	0	3
18 Edward III (1345)	1	2	2
19 Edward III (1346)	1	2	6
27 Edward III (1354)	1	5	0
9 Henry V (1422)	1	10	0
49 Henry VI (1471)	1	17	6
18 Henry VIII (1527)	2	5	0
34 Henry VIII (1543)	2	8	0
36 Henry VIII (1545)	4	16	0
1 Edward VI (1547)	7	4	0
5 Edward VI (1551)	14	8	0
6 Edward VI (1552)	3	0	0
43 Elizabeth (1601)	3	2	0
56 George III (1816)	3	6	0

1 Ruding, pp 89-90.

Ruding's own work on his Annals closed in 1810 with the following interesting and instructive:

"CONCLUSION."

"From a consideration of the foregoing historical detail, it is evident, that a fundamental error has pervaded the system of coinage from the earliest period to the present times, and has vitiated every proceeding under it; I mean the mistaken notion, that pains and penalties can be devised more powerful in their effect than the temptations of avarice.

Hence arose the making, originally, the coins of equal value in weight and in tale; which afforded such an opportunity of gain by uttering light imitations of them.

Hence, the cruel punishments enacted by the Anglo-Saxon and Anglo-Norman laws, against counterfeiters.

Hence, divers absurd and ineffectual statutes; such as those which prohibited the exportation of money, enforced the importation of bullion, regulated its value by the price given in the mint, confined the purchase of it to the king's officers there, and forbade the exchange of coins for profit, by any but the king's exchangers.

All these are strong indications of ignorance of the principles of trade, and will be found, by reference to the Annals, to have been totally inadequate for the purposes intended.

Very few of these mistakes have been corrected in modern times, but innumerable others have been added to them; the principal of which I shall enumerate.

First, the giving up the seigniorage by King Charles II., in consequence of which the public was burdened with the expense of coinage.

The effect which was intended to be produced by this measure, was probably a constant supply of money. But the actual effect has been a redundancy of those coins only which afforded a profit upon coinage, without much regard to the convenience of the public.

Secondly, the allowing coins of the same denomination, and current value, but of different weight, to circulate at the same time.

This was done in some small degree when Charles II. first issued his copper halfpennies, but has been of late carried to a ruinous extent, especially in the copper coinage; where Boulton's pieces, and the Tower halfpennies (not more than half their weight) have been permitted to run together. The last diminished coinage which was

issued from Soho, added to this absurdity, an impression similar to that of the heavier coins from the same mint.

Thirdly, the weighing of coins, which is an absolute departure from the first principles of coinage; for the stamping of money was originally devised in order to prevent the trouble of weighing and assaying.

Fourthly, the continuing the coins at the same weight, notwithstanding the variations in the price of bullion. This practice received an unfortunate confirmation at the great re-coinage in the reign of King William III., when it was sanctioned by the opinion of Mr. Locke, in defiance of facts, from which he might have learned to expect that disappearance of the coins which took place in a very few years from the time when they were formed according to his plan.

It might reasonably have been presumed, that such an instance of the sudden destruction of a coinage so conducted would have produced conviction that the principle was erroneous; but the theory appears to have been rather confirmed than weakened by it; and it is even now acted upon with respect to the most important part of coinage, whilst it is abandoned in that where its adoption would be of comparatively trivial consequence.

The effect is, that nearly all the gold coins have been melted down, and will be again melted upon every issue of them, notwithstanding any pains and penalties which may be enacted.

Fifthly, the barbarous workmanship of the coins.

If it were intended to tempt the unwary to commit the crime of counterfeiting, a more effectual mode could not have been devised, than that of making the workmanship of the money rude, and consequently easy of imitation.

The effect of this is, that almost every worker of iron can sink a die to imitate the present coinage.

Sixthly, inattention to the proportionate value of gold and silver, in determining the weight of the respective coins.

In consequence of this error, that metal which is overvalued, buys up and consumes the other.

Lastly, the alteration in the mode of trial of the pix, from a period of three months to one of an uncertain length, sometimes of considerable extent; so that several millions of money have been put into circulation without a previous trial by a jury.

All these are in my judgment, deviations from the true principles of coinage. The following suggestions may possibly facilitate our return into the right path.

The theory of coinage must be simplified, by casting out of it the consideration of the manner in which our money will be received by the neighboring nations. For they will take it only as bullion, and if the balance of trade be against us, and must be made good by gold and silver, it is most expedient that it should be done by the plain metal, which will cost nothing in the coinage.

The theory, thus simplified, will regard only the convenience of the subjects of that monarch by whom the money is struck; and therefore, in our case the sole consideration will be, whether we will receive the coins at such a weight as the highest price which bullion has ever attained will allow, or whether we will be contented with a scarcity of gold, with adulterated silver and copper, and the miserable expedient of filling up the void, either with tokens or with paper money of any man's issuing, who can find credit sufficient to force it into currency.

If we are, as unquestionably we with justice may be, dissatisfied with that compound medium which is now in circulation, the remedy seems to be of no difficult attainment.

Let the weight of the coins be so reduced as to prevent their being affected by variatons in the price of bullion; and let the workmanship of them be of the most exquisite kind that the artists of this country can effect. By these means, the destruction of the money by melting will be prevented, and the possibility of counterfeiting will be confined to workmen of the highest order, who will rarely be tempted to fraud by the pressure of want.

Let the standard of fineness be continued as heretofore; because few persons are able to judge with accuracy of the nature of alloy; but every man can weight the coins, and therefore the diminution in that respect will be open to the examination of all.

Let the money be made smaller in diameter, and of greater thickness than it is at present, in order to allow higher relief to the impression, and to prevent the loss of weight by wearing, which is in a great degree according to the extent of surface. This will also allow the edges to be defended by the impression of a legend.

Let the proportionate value of gold and silver to each other be accurately adjusted, that the overrating of one may not produce the destruction of the other.

And let the quantity of the various metals to be coined be regulated according to the nature of the exchanges which are most commonly effected. These, from the increase of wealth amongst us, will require that the gold

should form the principal part of the coinage, and that the silver and copper should be considered only as aliquot parts, or as fractions, of it.

If this plan, or something equivalent to it, cannot be adopted, the coinage of gold and silver must be altogether abandoned, and those metals must circulate, as they do in China, by weight.

But surely the time is not yet come, when it will be necessary, or even expedient, to make so near an approach to the barbarism of simple barter. The good sense of the people will feel the propriety of regulating the weight of the money, according to the increased value of the precious metals; and they will readily agree to a diminution of weight, proportioned to the security which they will receive against the imposition of counterfeits.

One thing alone will then be wanting to the perfection of the coinage, and that is, the superseding of heraldic ensigns by reverses allusive to public events, according to the proposal of Dean Swift in the reign of Queen Anne, which has been already mentioned, but is in my mind of so great importance that I do not scruple to repeat it.

By this means metals that are at present only a dead treasure, or mere curiosities, will be of no use in the ordinary commerce of life, and at the same time perpetuate the glories of the monarch's reign, reward the labours of his greatest subjects, keep alive in the people a gratitude for public services, and excite the emulation of posterity. To these generous purposes nothing can so much contribute as metals of this kind, which are of undoubted authority, of necessary use and observation, not perishable by time, nor confined to any certain place; properties not to be found in books, statues, pictures, buildings, or any other monuments of illustrious actions.

"I would not, however, limit the reverses to the sole recording of what are commonly understood to be illustrious actions, but would extend their province so as to comprehend all remarkable discoveries in manufactures, commerce, art, or science, or, in short, to whatever tends to promote the perfection and happiness of man."

The tabulations we have made from Ruding, and his Annals furnish us with abundant evidence, that outside of the Tudor debasement extending over the brief space of seventeen years, there is no instance in the entire coinage history of England after the reign of Stephen where the crown as the sovereign authority or Parliament as the sovereign authority, debased the coin.

Stephen's debasement was in direct violation of the Charter of Henry which Stephen had at his coronation solemnly confirmed.

The Tudor debasement, therefore, is the only one that can possibly be relied on to sustain the proposition of Mr. Justice Gray that the power to debase the coin is an attribute of sovereignty.

The Tudor debasement was not only a violation of Magna Charta, but also of the statute of 25 Edward III c. 13, (1350), which expressly provided "that the money of gold and silver which now runneth shall not be impaired in weight or alloy," etc.

In the first volume of this brief at page 60 it is shown that Sir Edward Coke was of the opinion that after the enactment of 25 Ed. III, Ch. 13, the crown had no power to debase the coin. At that writing I had not been able to obtain the volumes constituting the second part of Coke's Institutes. The law libraries within my reach only had the first part of Coke's great work. As all of the twentieth chapter of the second part is both interesting and instructive I here insert it in full, omitting the column containing the Latin original.

CHAP. XX.

SECOND PART OF COKE'S INSTITUTES.

"It is ordained, that no goldsmith of England, nor none otherwise within the king's dominion, shall from henceforth make, or cause to be made, any manner of vessel, jewel, or any other thing of gold or silver, except it be of good and true allay, that is to say, gold of certain touch, and silver of the sterling allay, or of better, at the pleasure of him to whom the work belongeth; and that none work worse silver than money. And that no manner of vessel of silver depart out of the hands of the workers, until it be assayed by the wardens of the craft; and further, that it be marked with the leopard's head, and that they work no worse gold than of the touch of Paris. And that the wardens of the craft shall go from shop to shop among the goldsmiths, to essay if their gold be of the same touch that is spoken of before; and if they find any other than of the touch aforesaid, the gold shall be forfeit to the king. And that none shall make rings, crosse nor locks, and that none shall set any stone in gold, except it be natural. And that gravers or cutters of stones

and of seals shall give to each their weight of silver and gold (as near as they can) upon their fidelity; and the jewels of base gold which they have in their hands, they shall utter as fast as they can; and from henceforth, if they buy any of the same work, they shall buy it to work upon, and not to sell again; and that all the good towns of England, where any goldsmiths be dwelling, shall be ordered according to this estatute as they of London be; and that one shall come from every good town for all the residue that be dwelling in the same, unto London, for to be ascertained of their touch. And if any goldsmith be attained hereafter, because that he hath done otherwise than before is ordained, he shall be punished by imprisonment, and by ransom at the king's pleasure. And notwithstanding all these things before mentioned, or any point of them, both the king and his council, and all they that were present at the making of this ordinance, will and intend that the right and prerogative of his crown shall be saved to him in all things. (Altered by 8 & 9 W. 3. c. 8. f. 9. and 6 G. 1. c. 11. f. 41. 21 Jac. 1. c. 28. 37 E. 3. c. 7. 2. H. 6. c. 14. 17 E. 4. c. 1. 4 H. 7. c. 2. 18 El. c. 15.)

(1) Ore de certeine touche. The pound of gold and silver containeth 12 ounces; 12 grains of fine gold make a caret, 24 carets of fine gold make an ounce, 12 ounces make a pound of fine gold of the touch of Paris; but by the statute of 18 Eliz. 22 carets fine make an ounce.

(2) Et argent del allay de esterling. In our law it is called sterlingum. For the name of esterling or sterling money there be divers opinions.

Our historians think it is so called, ab effigie sturni, aviculae, quae in altera parte nummi impressa fuit, nam sturnus anglice sterling dicitur, etc. vel quod numulus in altera parte haberet notam stellae, quam Angli ster vocant.

And with the conceit of the sterling agreeth Linwood the civillian in his glosse upon the provincial constitutions.

The Scots think it should take his name of a towne in Scotland, called Striveling, alias Sterling.

But the esterling or sterling penny took the name of the workman being Esterlings, that both coined it, and gave it allay as the florence of gold is called of the Florintines, and the portagues of the Portugals, etc.

And the sterling penny was first coined by Esterlings in the reign of Henry the Second; and now money of that allay is counted the lawful money of England.

Twenty pence of silver made an ounce, and twelve ounces made a pound of fine silver, and eleven ounces of fine silver, and one ounce of allay maketh a pound weight of sterling silver intended by this act.

By the statute of 18 Eliz. plate of silver ought to be of the finess of xi ounces two penny weight.

Allay is the mixture of a baser metall than silver or gold, called in our bookes false metall.

And if more allay be put into the money than is limited to them by the indenture between the king and them, or make it of lesse weight, it is treason, and herewith agree Britton, treating of treason, where he saith, Auxy le fesors de noste money counterfeit, ou plus de allay mys en nostre money que mister ne ferra solonque le forme et usage de nostre realme, and hereunto accordeth Fleta.

The ancient currant silver was the penny; for so I find in the Register in an action of account against a receiver, the plaintife supposed the defendant to be receptor denariorum; and when a man wageth his law in an action of debt, the entry is, quod non debet praefato quaerenti 4. libras nec aliquem denarium inde. And at the making of this statute in 28 E I. the penny was the current money of England; it is called in Latine Denarius, and very aptly to be derived a numero denario, as it is taken by us; quilibet enim denarius argenti valebat 10. denarius aeris; denarii dicti, quia denos aere valebant; quilibet denarius puri auri valebat 10, denarios puri argenti.

Penny in English cometh of the Saxon word pennyz.

In 13 H. 3, there was found by a plowman in tilling the earth money in vessels so ancient, as it was not knowne; the record saith, De veteri moneta ignota in dolis arando reperta, etc.

The richest king of England of treasure, that I have read of, was King Henry the Seventh, who left at his death in ready money fifty and three hundred thousand pounds, most of it in foraine coine.

(3) Et que nul oure, pejor argent que monie.) The sense hereof is, that none shall gild worse silver then of the finess of sterling; for such ought the money to be, and all silver vessels ought to be of the allay of good sterling; for the plate of England is both for the honour and riches of the realme.

(4) Tanque il soit assaie per les gardens del misterie.) This is evident of itselfe.

(5) Auxy que soit signe dun teste de leopard.) This is observed to this day, the statute of 37 E. 3 added, that

every goldsmith should have his private marks, etc., to the end it may be knowne who made it; besides the surveyors must set their marke; and then an alphabetical letter must be also set into it, so it must have foure markes.

For these matters see the statutes of 2 H. 6, ca. 14, 17 E. 4, ca. 1, 4 H. 7, ca. 2, 18 Eliz., cap. 14.

(6) Et que nul ne oure pejor ore que de touche de Paris.) Of this sufficient hath been said before.

(7) Et que nut ne fac' auneux, croix, ne firmeaux.) This branch is repealed by 21 Jacobi, regis, cap. 28, versus finem.

(8) Et nul Mett' pier en ore, fi il ne soit naturel.) Counterfeit stones should not be set in gold, to the end that the subject should not be deceived thereby.

(9) Que le droit et le seigniorie de la corone saves luy soient per touts.) Here is offered just occasion to speak what prerogative the king hath in silver and gold, and first and principally in making of money currant within the realme.

It is said by those that were of counsell with the king in the case of the mines, that it doth pertaine to the king onely to put a value to the coine, and to make the price of the quantity, and to put a print to it; which being done, the coine is currant for so much as the king hath limited. Before we speak to this, let us see what our ancient authors and acts of parliament have holden and enacted concerning the monies of England in genere, and then shall we the better conceive of this opinion.

The Mirror treating, Des articles per veiels roys ordeins, saith thus, Ordein fuit que nul roy de cest realme ne poet changer sa money, nex impairer, ne amender, ne auter money faire, que de ore ou dargent sans lassent de touts ses counties, that is, without assent of parliament.

For the better understanding hereof, and of that which shall be said hereafter, it is to be understood, quod metallorum sunt septum species, viz., ourum, argentum, aes, sive cuprum (sic dictum, quia primo inventum fuit in Cypre) stannum, ferrum, plumbum, et aurichalchum. Now as to the making of coine these metals by the law of England are subdivided in metallum legale, sive verum, et metallum illegitimum sive falsum. And this subdivision appeareth both by act of parliament, and by our bookes.

Quicumque in emptionibus et venditionibus oblum seu quadrantem legalis metalli, et debitam habentem

formam recusare praesumserit, tanquem regiae majestatis contemptor capiatur, et in carcerem detrudatur. By this act it appeareth that no subject can be enforce to take in buying or selling, or other payment, any money mode, but onely of lawful metall, that is, of silver or gold, as the Mirror hath told you, and by this it is proved, that having respect to money, there it an unlawful metall, and these be the other five.

The money of England is the treasure of England, and nothing is said to be treasure trove but gold and silver. See the third part of the Institutes, cap. Treasure trove. And this is the reason that the law doth give to the king mines of gold and silver, thereof to make money, and not any other metall which a subject may have, because thereof money cannot be made. And hereof there is a great reason, for the value of money being the measure of all contracts, etc., is in effect the value of every man. And herewith agreeth the booke in 3 H. 7. Quod ille qui facit monetam contra odrinationem, &c., allaiatam, viz., alcamino, vel alio falso metallo, proditio, est, where all the said five base metal (as to be put in coine) are deemed false metals. Bracton calleth money made of them monetam reprobam, et monetam falsam.

To omit many things that might be said to the same intent, and to confirm this point with an act of parliament made in the 25 years of the reigne of that wise and victorious king Edward the Third, in these words: "Item, it is accorded that the money of 'gold and silver which now is currant, shall not be impaired in weight, or allay, but as soon as good way may be found, that the same be put in the ancient state, as in the sterling."

By this act three things are to be observed:

1. That the money of England must be either gold or silver.

2. That the currant money of England cannot be impaired either in weight or allay.

3. That the allay of the sterling was the ancient currant money of England. And herewith agreeth the statute of 9 H. 5.

By an act made, not in print, it is enacted, that silver shall be coined according to the old esterling in poize, and allay, to be currant amongst the subjects, and not to be carried over, on paine of death. And if the Flemings shall coine their silver accordingly, that the same be currant amongst the merchants. And that the sterling money was the ancient currant money of England. That

in the reigne of E. 1, there were divers white monies called pollards, crocards, staldings, eagles, leonines, and steepings artifically made of silver, copper and sulphur, and yet currant within the realme; and for that two pieces of those monies were but of the value of one sterling, king E. I. by his proclamation utterly forbad the same. And yet to look somewhat higher, Matth. Paris, 33 H. 3, pag. Denarius Angliae qui nominatur sterlingus rotundus sine tonsura ponderabit 12 grama frumenti in medio spicae, et 20 denarii faciunt unciam, et 12 unciae faciunt libram, &c.

And yet to ascend to former times, Haec sunt jura quae rex Angliae solus et super omnes habet in terra sua, &c., viz., murdrum, falsaria monetae suae, incendium, hamsockna, forstall', firdinga, flemen firmae, praemeditat' assultus, roberia, &c.

But I will define the studious reader to cast his eyes upon the lawes before the conquest.

Si quis nummum corripuerit, ei manus scelere violata praeciditor, eamque prece vel pretio redimi nefas esto, &c.

In dimensione et pondere nihil esto iniqum, ab iniquitate deinceps quisque temperat, &c.

And melting of good monies of the realme and altering the same into base coine was deemed in parliament amongst the rest of the calamities that then fell upon this realme. And that the law is this, it is best for the king; for by the impairing of the coine of England either in weight or in allay, the king hath the greatest losse both in his own revenues, forfeitures, and subsidies, and also in the disvaluation of his subjects, for the king can never be rich, or his kingdoms safe, when his subjects be poore, and the finenesse and goodnesse of his coine is inter magnalia et regalia coronae.

At the aforesaid parliament of 25 Ed. 3, another excellent law was made in these words: "Item, it is accorded and assented, that the moniers, and other wardens and ministers, of the money shall receive plate of gold and silver by the weight, and not by number, and in the same manner shall deliver the money, when it shall be made, by weight, and not by number, without delay."

Queen Elizabeth (Angliae amor), finding in the beginning of her raigne some copper money, and all too much, and against law allayed, amongst many others, reformed the same, as upon her tomb in Westminster it appearth, Religio reformata, pax fundata, moneta ad suum valorem reducta, classis instructissima apparata, gloria navalis res-

tituta, rebellio extincta, Anglia totos 40 annos prudentissime administrata, ditata, et munita, Scotia a Gallis liberata, Gallia sublevata, Belgia sustenata, Hispania coercita, Hibernia pacata, orbisque terrarum semel atque iterum circumvagatus.

Now for the king's prerogative in the mines or veines of gold and silver (for he hath no prerogative in any other metall) you may reade at large in the case of the mines. If you desire to reade other authorities not cited there de aurifodinis, argenti fodinis, et aliis mineris, you may read Bracton, Fleta, the Register, and other ancient authors, records and book-cases. And to this you may adde a record which we lately found out.

Patrius del Gile & vvxi. alii minetarii apud Aldeneston implacitantur per Henr' de Whiteby, & Joannam uxorem ejus pro eo quod succiderunt arbores suas apud Aldeneston vi & armis & eas asportaverunt ad valentiam lx. li., &c. Ipsi dicunt quod tenent mineram de Aldenston ad firmam de dom' rege, & dicunt quod talis est libertas minerae praedictae, quod minetarii ejusdem minerae possunt capere boscum, cujuscunque fuerit, propinquiorem & utiliorem venae argenteae praedictae minerae, quam invenire contigerit. Et quod idem minetarii possint capere pro voluntate sua boscum illum ad mineram illam ardendam & fundendam. Et licitum est eis capere boscum illum ad aedificandum, & ardendum, & claudendum. Et quod licitum est eis boscum illum dare ministris minerae praedictae pro stipendiis suis. Et etiam licitum est divitibus ejusdem minerae dare pauperibus de bosco illo ad sustentationem suam quantum volurint. Et dicunt, quod, quia praedictus boscus fuit propinquior & utilior cuidam venae quam ipsi invenerunt, ipsi succiderunt boscum praedictum ad comburendam, & fundendam mineram praedictam, & ad aedificandum, claudendum, & ad dandum pauperibus & ministris ejusdem minerae pro stipendiis suis, sicut praedictum est. Dicunt etiam, quod non est licitum aliquibus dominis boscorum postquam opi minetarii inceperint succidere in boscis illis ad mineram praedictum, sicut praedictum est, aliquid de boscis illis vendere, nec dare, nisi tantum inde capere rationabilia estoveria sua. Et dicunt quod ipsi & anteces. sui, nomine domini regis inboscis vicinis quorumcumque fuerint ad mineram tali libertate usi sunt a tempore quo non extat memoria, unde bene advocant quod ipsisuccideruntpraedictum boscum ratione ejusdem libertatis, & non contra pacem, &c. Et Henr' Joan' bene cognoscunt quod licitum est minetariis praedictis capere de propinquioribus & utilioribus boscis ad mineram regis ardendam & fundendam, set dicunt, quod, ultra necessaria

sufficientia ad mineram illam ardendam & fundendam, vi & armis boscum, suum ad valentiam xi.li. succiderunt, vendiderunt, et asportaverunt, de quo nihil proficui ad mineram regis devenit, nec ad ejusdem minerae promotionem. Et quod ita sit petunt quod inquiratur; unde si boscum ille et alii de partibus illis destruantur, & ad aliqua alia inde facienda quam ad mineram praedictam comburend' & fundend', hoc erit ad dampnum domini regis; pet' judic si minetarii praedicti ad praemssa quae allegant, cum in manifestum dampnum domini regis redundant, admitti debeant, &c., cum defructis boscis illis cessabit minerae illius proficuum, &c., dies dat' est in tres Pasch', &c.

Modo reddit Oxenford lx. li. ad numerum de 20 in ora, (i) ad numerum de xx.d. in uncia, sic interpretatur in lib. abbattiae de Burton in com' Staff.

Moneta appella est, quia nos monet ne qua fraus id metallo vel pondere fiat: Pecunia a pecudibus est appellata, sicut a juvando jumenta dicta sunt, quia in pecudibus universa antiquorum substantia constabat: antiquissimi non dum auro et argento invente, aere utebantur, nam prius aerea pecunia in usu fuit, postea argentea, deinde aurea aearium dicitur, quod prius aes fuit in usu. Haec Isidorus. subsequuta. Sed ab ea quae incepit nomen retinuit, unde aearium dicitur, quod pius aes fuit in usu. Haec Isidorus.

Numisa apo tx nomx, (in Greek) hoc est, a lege in v commutato, quia cum antea permutatione mercium homines eti solerent lege, lege usus nummi introductus est. Some deriveth it, a Numa Romanorum rege, quiamipse primus imaginibus notavit, et titulo nominus sui praescripsit. Others imagine, quod dicitur nummus, eo quod nominibus effigieque signatur.

Panis Wastelli de Ferlingo, (i) quadrantis, derivatur a verbe Saxonic feorling, per contractionem ferling.

Where you reade de auri fodinis and argenti fodinis, it is affirmed by merchants that have travelled for gold, that there are silver mines, that is, there is oare or soile of silver digged out of the earth, and out of that by art is silver tried, but there is no oare or soile of gold, but it is gold originally in smaller pieces, as it were dust, which being washed down to the shoare, it is found by the yellownesse of the water. And this is confirmed by Job: for he saith, Habet argentum venarum suarum principia et auro locus est in quo conflatur; surely, there is a veine for the silver, and a place for gold where they finde it. And soon after, locus sapphiri lapides ejus, et glebe illius aurum: the stones of it are a place of sapphires, and the dust of it is gold. And yet for distinction sake it is called aurifodina.

For stannum, tinne, England hath of ancient time furnished other countries, both farre and neare, as you may read in Diodorus Siculus, who lived in Augustus time. But Polibius, who wrote about two hundred years before him, affirmed this island to be abundantly stored with tinne; and we have taken the greater liberty herein (to delight, if we could the reader) for that herewith we conclude this last chapter of this excellent parliament.

MATHEW BACON.

Mathew Bacon, in his "New Abridgment of the Law," Vol. 5, p. 514, expresses an opinion favorable to that of Hale as opposed to that of Coke, but he introduces his comments with the following clear statement of the reasons for having a standard of value of a given weight of the precious metals, and the effect on subsisting contracts of any change in it:

"The use and necessity of money arose from the nature of trade; but more especially from this, that the several provisions of life are in their own nature perishable, and not to be laid up in specie. This made it necessary that some things should be fixed on to pass as tickets of credit in exchange for those commodities; hence the thing agreed on must have these qualities: 1st. It must be durable, because otherwise it would not be more easily laid up than the provisions themselves. 2dly. It must be scarce, that a little of it may serve to be carried from place to place, in order to supply men's several occasions. Upon these two accounts gold and silver were pitched on as the two metals most scarce and most durable, and therefore best able to answer both the purposes. If therefore gold and silver be taken up as the measures of all other things, it follows, that the comparison of their value will stand thus: when the labor spent in digging, refining, and importing an ounce of silver, is equal to the labor in sowing, reaping and threshing a bushel of corn, then is an ounce of silver equal to a bushel of corn; the industry in the acquiring is equal, and, consequently, men's property in them is the same, that is, their values are equal: for, if the corn be more plenty than the silver, then a bushel and a half of corn will possibly be worth an ounce of silver; if, on the other hand, the silver be more plenty than the corn, then, possibly, an ounce and a half of silver will amount to no more than a bushel of corn; and what is done by coining of silver is no more than ascertaining the value of several

pieces in order for commerce; as that the crown shall contain an ounce and the like, that the people may not be compelled to use their scale and touchstone on every bargain.

"The policy in relation to the coin is, that the value remains unalterable; for the standard cannot be varied without manifest injustice; as, suppose a man contracts for ten crowns, which is equal to ten ounces of silver, that suppose equal to ten bushels of corn, and before payment the publick standard should alter; for instance, that the crown were lessened to half an ounce, and yet we suppose that the industry in the acquirement is the same in relation to the ounce of silver and the bushel of corn; it then follows that the ten crowns paid in publick money will be equal to but five bushels of corn, and, consequently, the man by the publick act will lose half the value in which he had a property, by the contract: so, in cases of foreign trade, where the measure of commerce is the intrinsick value of the silver or gold, there can be no variation of such measure without injustice."

JOSEPH CHITTY.

Joseph Chitty, Jr., in his work published in 1820 on the Prerogatives of the Crown, p. 197, discusses the power of the King to debase the coin as follows:

"Whether the King can legally change the established weight or alloy of money, without an act of Parliament, seems not to be quite clear. By the statute 25 Ed. 3 st. 5, c. 13, it is "accorded and established that the money of gold and silver which now runneth, shall not be impaired in weight nor in alloy; but as soon as a good way may be found that the same be put in the ancient state as in the sterling." Lord Coke (d) in his comment of Articuli Super Cartas, ch. 20, 21, cites among other acts and records, this statute of the 25 Edw. 3, and the Mirror of Justices, ch. 1, s. 3 ("Ordein fuit que nul roy de ce realme ne poit changer sa money ne impayre ne amender ne antre money faire que de or on d'argent, sans assent de touts ses counties,") in support of his opinion against the King's right to alter money in weight or alloy. Lord C. J. Hale (a) differs with Lord Coke, and relies, first, upon the "case of mixt monies (b)"; secondly, on the practice of enhancing the coin in point of value and denomination, which he observes has nearly the same effect as an embasement of the coin in the species; and lastly, on the

attempts which have been made to restrain the change of coin without consent of Parliament. In the case reported by Sir John Davis, it appears that Queen Elizabeth sent into Ireland some mixed money, and declared by proclamation that it should be current and lawful Irish money. This money was certainly held to be legal coin of Ireland; but it is most probable that as the case was in Ireland, the statute of 25th Edw. 3. and the other acts cited by Lord Coke, were not considered in discussing it; as it is clear from one of Poyning's laws (c) they might have been. And it is a fair presumption that those statutes were not brought before the Court, no mention being made of them, though Sir M. Hale himself admits that the statute of Edw. 3., is against his opinion. As to the practice mentioned by Lord Hale of enhancing the coin in point of value and denomination, that seems very distinguishable from altering the species or material of coin, by changing its weights or alloy. Even admitting the existence of a practice to imbase coin in the alloy, still little importance will be attached to it, when it is remembered how frequently some Kings have endeavored to extend the limits of their prerogatives. The attempts which have been made to restrain the change of coin without consent of Parliament, prove but little in favor of Lord Hale's opinion; for those attempts have been so made in order to restrain the exercise of a prerogative which was denied, and it does not appear that they were made in order to overturn a prerogative, the legal existence of which was admitted. The authority of Sir William Blackstone may perhaps turn the scale in favor of Lord Coke's opinion, if that opinion required it. He observes (d), "that the King's prerogative seemeth not to extend to the debasing or enhancing the value of the coin below or above the sterling value, though Sir Matthew Hale appears to be of another opinion." It need only be added that the statute 14 Geo. 3. ch. 92 seems to furnish an inference that the standard weight of the gold and silver coin of the kingdom is unalterable, but by act of Parliament. If Lord Coke's opinion be correct, it seems, as laid down by Sir William Blackstone (a), that the King must fix the value of foreign money, rendered current in this country, by comparison with the standard of our own coin; otherwise consent of Parliament will be necessary.

"No proclamation seems necessary to the legitimation of money coined by the royal authority (b), unless pieces be coined (c); but such proclamation is essential to the legitimation of foreign coin made current here."

OTHER EXTRACTS FROM RUDING.

In 1 Ruding's Annals of the Coinage of Great Britain, p. 11, it is said:

"From the slight account which Caesar has afforded us respecting the Brazen and Iron substitutes for money amongest the ancient Britons, no conclusion can be drawn as to the standard (meaning the standard of fineness) adopted by them, as he says only in general terms, that they adjusted the brazen masses and iron rings to a fixed weight, but has not given any proportions."

Further on, the author expresses the opinion that William the Conqueror made no alteration in the standard at his arrival in England, "and that the statute of 51 Hen. III which declared the weight of the English Penny was declaratory only and did not introduce any new proportion."

He concludes on the subject as follows:

"The fineness appears to have been nearly equal to the present standard, namely, eleven ounces, two pennyweight fine, and eighteen pennyweights alloy; with the exception of some particular coins of Burgred, King of Mercia, and of Aelfred the Great, which were of much coarser metal. The earliest accounts which mention this standard of fineness, and which are to be found in the reign of Edward I, always speak of it as of high antiquity, and distinguish it by the title of The Old Standard of England. To the Saxons, then, may be referred with great probability the introduction of this standard, both of fineness and of weight, into the Mints of Britain."

He further says that the tower pound was brought by the Saxons from Germany, where it was afterward known as the Cologne Weight.

Referring, on pp. 16-17, to the word "sterling," Ruding says:

"Whatever may be determined respecting the etymology of this word, or the time of its introduction, it is undoubted that it was in use all over the continent of Europe for the purpose of peculiarly designating the money of England, and it is a striking circumstance in the history of our coinage, that the fineness of the silver money, which was expressed by it, has preserved its integrity unbroken from the reign of Henry II. (at the lowest calculation) down to

the present time—a period of more than six hundred years."

In a note he makes this comment:

"From this must be deducted about twenty years, from the latter end of the reign of Henry VIII to the beginning of Elizabeth's; *which form an era highly disgraceful to the mint.*"

Ruding next considers the weight of the English silver coins, and he says that from the earliest times they professed to be equal in weight and tale. He then says:

"At that professed standard, however, they continued for more than two hundred years from the Norman conquest, that is, until the 28 year of Edward I. From that time until the 43rd Elizabeth, a period of full three hundred years, the legal weight of the coins was progressively diminished, and yet, notwithstanding the variations in the price of Bullion which have taken place since the conclusion of her reign, the weight has continued stationary for more than 200 years."

At pp. 168-171 Ruding gives the following account of the different methods resorted to for the purpose of securing accuracy and honesty in making payments to the Crown, as well as between private parties, and it appears therefrom, that the one great and only object and aim was to ascertain the correct amount of the pure silver or gold contained in the coins tendered in payment:

"We have seen, before, that the Trial of Pix, in its original purity, was sufficient for their defence from fraudulent practices before they were issued from the mint; and, accordingly, our Ancestors ventured to receive Money into the King's Exchequers as if it were of full weight and fineness, and considered the coins to be, as they were intended to be, equal in weight and in tale. Such receipts were entered in this manner—Denarii, etc., etc., ad numerum. But it could not long escape notice that, although the coins might issue from the Mint in perfect purity, yet they soon afterward became obnoxious to the depredations of unprincipled men, who not only impaired the legal Money, by various modes of rendering it deficient in weight, but also fraudulently forced into currency counterfeit coins of base alloy."

"The provisions by which the Receipt of the Exchequer was guarded against the fraud of deficiency of weight were these—Solutio ad Scalem, and ad Pensum. Though these terms are synonymous, yet the proceedings under each mode were totally different."

"The Payment ad Scalem seems to have been originally intended to save the trouble of counting the money; a purpose which would be completely answered by it, provided the coins were undiminished. But it must soon have been discovered, that even the regular wear of the coins, in the common course of currency, would, in a short time after they were issued from the Mint, render this mode of payment inaccurate."

"An attempt was made to compensate this error by a general payment of sixpence in addition to every Pound in Tale; but the impropriety of applying one general principle to particular cases, infinitely varying, must soon have been experienced, and, it is probable, occasioned the introduction of that mode of payment which was distinguished by the name of Ad Pensum. This was totally different from the former, for the whole deficiency of weight, whatever its amount might be, was to be made good.

"Entries of this kind occur in every column of Domesday Book, in various forms: as Lib. ad pensum, ad pendus, ad peis, pensatas, cum pensione, cum pondere; and these are frequently coupled with a term expressive of a further proof of the Money, which had even then become necessary, from a corruption of its Alloy.

"This proof was obtained by actually melting down a certain portion of the sum paid in, and reducing it to due fineness. The process was called combustio, and it was sometimes compounded for at the rate of an addition of one-twentieth part; but yet this was nevertheless distinguished by the same name as if it had been assayed, and was said to be dealbated or blanched.

"It is obvious, however, that in many cases, the payment of one-twentieth part would not bear any exact proportion to the baseness of the coins, and that, consequently, the officers of the Exchequer must, at times, have demanded compensation more nearly adequate to the circumstances of the money. In order to ascertain the true proportion between Money Blank, and by Tale, the combustion was sometimes repeated more than once for the same sum. Thus, in the 14th H. III, the Sheriffs of London paid at the Exchequer £214 6s. 3d. part of the Ferm of that city. The Money was right by weight, but being brought to the Examen by fire, it lacked upon the first Assay xlllj*d.* per Pound, and upon the second Assay xij*d.* The Sheriffs challenged both Assays, and desired a third. But the Treasurer and Barons not being willing to proceed to a third Assay without further advice, the Ferm was entered at vij*d.* per Pound Blank, as if the third Assay had taken

place, reserving the King's right to combustion; so that if on a third combustion it proved to be more deficient, a greater allowance should be made, according to the laws and custom of the Exchequer. I believe that no instance can be produced of the combustion of Gold Coins.

"Such were the means devised to protect the Revenues of the Crown from being defrauded by light or base money; and they seem to have been well calculated for that purpose, as the payments were large, and proper Officers were constantly attending to perform the different operations.

"But it is evident that such an examination of Money could not obtain a place in the common transactions between man and man; for very few, indeed, would be competent to perform the operation of Assaying; nor, if all had been so qualified, could the time have been spared from the more necessary transactions of business.

"The Trial of Money, therefore, by Assay, must have been chiefly, if not altogether, confined to payments made to the Officers of the Revenue.

"The other mode of Trial, by weighing each individual coin, was in use at a very early period; weights for that purpose were issued from the Mints in the 6th year of John, and probable, before that time.

"It should seem, however, that these legal weights were discontinued in succeeding reigns; for, otherwise, the deception, by which a Monk of St. Augustine's in Canterbury, contrived to defraud those who made payments to that Abbey, of whose rents he was the Receiver, could not have been practiced. This happened in the year 1335, and was effected by taking advantage of the unequal manner in which the coins were then formed; for he selected the heaviest of them, against which he weighed all the money that was paid to him. By this apparently fair, but really fraudulent transaction, he gained sometimes five shillings, and never less than three shillings and four pence, in every twenty shillings.

"I do not find that the discovery of this fraud, for which the Abbot and Convent were severely fined, occasioned the issuing of weights, legally stamped, from the Mint, in that reign or in any of the succeeding ones. But at later periods frequent Proclamations occur, requiring all persons to provide themselves with such weights (the price of which is sometimes fixed by the Proclamation) and to weigh them all the gold coins that should be tendered to them.

"The first instance of this kind, which I have discovered, is of the 30th year of Elizabeth.

"Such Proclamations are likewise found of the 17th James 1., and the 8th and 10th of Charles 1. And in the 30th of Elizabeth, the Mint provided not only the weights but the balances and cases also."

"The last instance is in the year 1774, when the State of Gold Coins was such as to make it necessary to consider them as little better than bullion, with respect to weight, and to order that none should be current which were deficient beyond a certain allowance. By the statute which enacted this the Officers of the Mint were authorized to make weights for the Guinea and the Shilling, and the parts thereof, and no other weights were allowed to be used. These weights were to be stamped by an officer appointed for that special purpose, who in the following year was allowed to take a certain fee for the same."

The statutes referred to are:

14 Geo. III., c. 92.
15 Geo. III., c. 30.

The history of the latter years of the reign of Henry VIII. shows that the Tudor debasement cannot be relied upon as historical evidence that the crown rightfully, lawfully and constitutionally possessed the power to debase the coin and to make the debasement applicable to pre-existing contracts.

Sir William Blackstone concluded his commentaries on the laws of England with a chapter entitled, "Of the rise, progress and gradual improvements of the Laws of England." (Book IV., p. 407.) At page 431 he said:

"It must be however remarked, that (particularly in his latter years) the royal prerogative was then strained to a very tyrannical and oppressive height; and, what was the worst circumstance, its encroachments were established by law, under the sanction of those pusillanimous parliaments, one of which, to its eternal disgrace, passed a statute, whereby it was enacted that the king's proclamations should have the force of acts of parliament; another concurred in the creation of that amazing heap of wild and new-fangled treasons, which were slightly touched upon in a former chapter. Happily for the nation, this arbitrary reign was succeeded by the minority of an amiable prince, during the short sunshine of which, great part of these extravagant laws were repealed. And to do justice to the shorter reign of Queen Mary, many salutary and popular laws in civil matters were made under her administration; perhaps the better to reconcile the people to the bloody measures which she was induced to pursue, for the re-establishment of relig-

ious slavery: the well concocted schemes for effecting which, were (through the providence of God) defeated by the seasonable accession of Queen Elizabeth."

Further on he said:

"The great revolutions that had happened, in manners and in property, had paved the way, by imperceptible yet sure degrees, for as great a revolution in government; yet, while that revolution was effecting, the crown became more arbitrary than ever, by the progress of those very means which afterwards reduced its power. It is obvious to every observer that, till the close of the Lancastrian civil wars, the property and the power of the nation were chiefly divided between the King, the nobility, and the clergy. The commons were generally in a state of great ignorance; their personal wealth, before the extension of trade, was comparatively small; and the nature of their landed property was such as kept them in continual dependence upon their feudal lord, being usually some powerful baron, some oppulent abbey, or sometimes the King himself. Though a notion of general liberty had strongly prevaded and animated the whole constitution, yet the particular liberty, the natural equality, and personal independence of individuals, were little regarded or thought of; nay, even to assert them was the height of sedition and rebellion. Our ancestors heard, with detestation and horror, those sentiments rudely delivered, and pushed to most absurd extremes, by the violence of a Cade and a Tyler, which have since been applauded, with a zeal almost rising to idolatry, when softened and recommended by the eloquence, the moderation, and the arguments of a Sidney, a Locke, and a Milton.

"But when learning, by the invention of printing and progress of religious reformation, began to be universally disseminated; when trade and navigation were suddenly carried to an amazing extent, by the use of the compass and the consequent discovery of the Indies; the minds of men, thus enlightened by science and enlarged by observation and travel, began to entertain a more just opinion of the dignity and rights of mankind. An inundation of wealth flowed in upon the merchants and middling rank, while the two great estates of the kingdom, which formerly had balanced the prerogative, the nobility and clergy, were greatly impoverished and weakened. The Popish clergy, detected in their frauds and abuses, exposed to the resentment of the populace, and stripped of

their land and revenues, stood trembling for their very existence. The nobles, enervated by the refinements of luxury (which knowledge, foreign travel and progress of the politer arts, are too apt to introduce with themselves) and fired with distain at being rivaled in magnificence by the opulent citizens, fell into enormous expenses; to gratify which they were permitted, by the policy of the times, to dissipate their overgrown estates, and alienate their ancient patrimonies. This gradually reduced their power and their influence within a very moderate bound, while the king, by the spoil of the monasteries and the great increase of the customs, grew rich, independent and haughty, and the commons were not yet sensible of the strength they had acquired, nor urged to examine its extent by new burthens or oppressive taxations, during the sudden opulence of the exchequer. Intent upon acquiring new riches, and happy in being freed from the insolence of tyranny of the orders more immediately above them, they never dreamed in opposing the prerogative to which they had been so little accustomed, much less in taking the lead in opposition, to which by their weight and their property they were now entitled. *The latter years of Henry the Eighth were therefore the times of the greatest despotism that have been known in this Island since the* death of William the Norman; the prerogative as it then stood by common law (and much more when extended by act of Parliament), being too large to be endured in a land of liberty."

The article on the history of England in the Encyclopedia Britannica was written by E. A. Freeman, D. C. L., and S. Rawson Gardiner. They close a description of the despotism of Henry VIII thus:

"In his days law became emphatically unlaw. Parliaments legislated as he thought good; judges and juries gave such judgments and verdicts as he thought good; and when their action was too slow, Parliament was ready to attain, even without a hearing, anyone whom the King wished to destroy."

The Tudor debasement was one of the tyranical and unconstitutional proceedings of Henry VIII. The seventeen years it continued was simply a period of retrogression in the coinage and constitutional history of England. As compared with the centuries of recorded English history, the period of debasement was so short as to make it that kind of exception from the general policy of the realm, as to prove, and give force and strength to that policy. It would be extremely absurd to give such

an exceptional debasement any weight as a precedent. It took many confirmations of Magna Charta, and centuries of development before its principals became thoroughly established in the actual government of England. Indeed it was not until the adoption of written constitutions in America and the establishment of judicial tribunals with power to enforce these constitutions, that the great principles of Magna Charta were completely and absolutely adopted as limitations on the powers of the government.

No one would claim that the numerous violations of Magna Charta in the history of England after that charter was granted, can be made use of, in construing that charter, for the purpose of showing that it did not mean, what it plainly laid down, as limitations on the sovereign power.

Nearly six centuries elapsed between the granting of Magna Charta and the adoption of the Constitution of the United States, and therefore, the fact that during seventeen years of the six centuries, there was a departure, in the coinage, from the requirements of the charter, cannot possibly be regarded, as a qualification of the charter, or of the Constitution of the United States, which was designed to put the principles of the charter beyond any controversy whatever.

The power to confiscate the property of creditors by debasing the coinage or that of debtors by an enhancement thereof, cannot be an attribute of any government in which the right to acquire, hold and enjoy private property, is recognized as within the protection of the government.

Undoubtedly the power to debase the coinage as ,to pre-exisiting debts could be used to make a redistribution of the wealth of the country; but that is something the constitution does not permit, and it cannot be done, except by ignoring, setting aside, or overturning its most important provisions.

IV.

The Bible teaches the same laws of money as the common law of England.

Next to the constitution and laws of the mother country, the Englishmen who settled in America were most familiar with the Bible. The theocratic governments established in New England by the Puritans were based upon it. They were a religious people who recognized no higher authority than the Divine word.

Hence, it is proper in construing the constitution which they subsequently helped to adopt, to find out what they had been taught by the

MONEY OF THE BIBLE.

Silver and gold were the money of the Hebrews during the period covered by the Old Testament. When Abram went up out of Egypt with his wife, Sarah, and all that he had, and Lot with him, his wealth was great.

"And Abram was very rich in cattle, in silver and in gold."

Gen. XIII., 2.

Sarah, the wife of Abraham, died in Hebron, in the land of Canaan, and the first business transaction mentioned in the Bible was the purchase by Abraham, from Ephron, of the cave and field of Machpelah for a burying place.

The conclusion of this transaction was conducted as follows:

"And Ephron answered Abraham, saying unto him."

"My lord, harken unto me: the land is worth four hunded shekels of silver; what is that betwixt me and thee? bury, therefore, thy dead."

"And Abraham hearkened unto Ephron; and Abraham weighed to Ephron the silver, which he had named in the audience of the sons of Heth, four hundred shekels of silver, current money with the merchant."

Gen. XXIII., 14-16.

Before Sarah's death Abraham sent back to his own country and his own kindred to take a wife for his son Isaac. Abraham's eldest servant made the journey with ten camels. When he met Rebekah at the well, she let down her pitcher from her shoulder and gave him drink, and drew water from the well and put it in the trough for all his camels.

"And it came to pass as the camels had done drinking, that the man took a golden earring of half a shekel weight and two bracelets for her hands of ten shekels weight of gold."

Gen. XXIV., 22.

There are many passages in the Bible where mention is made of shekels of silver.

Exod. XXI., 32.
Lev. XXVII., 3, 16.
Josh. VII., 21.
Judg. XVII, 2.
2 Sam. XVIII., 12.
1 Kings X., 29.
Neh. V., 15.

And shekels of gold.

Num. XXXI., 52.

Jeremiah gives an account of a purchase made by him:

"And I bought the field of Hanameel, my uncle's son that was in Anathoth, and weighed him the money, even seventeen shekels of silver."

"And I subscribed the evidence and sealed it, and took witnesses, and weighed him the money in the balances."

Jer. XXXII., 9, 10.

A shekel was twenty gerahs. The weight of the shekel was fixed by a sample, or standard shekel that was kept in the sanctuary.

"This they shall give everyone that passeth among them that are numbered, half a shekel after the shekel of the sanctuary; (a shekel is twenty gerahs); and half a shekel shall be the offering of the Lord."

"Every one that passeth among them that are numbered from twenty years old and above, shall give an offering unto the Lord."

"The rich shall not give more and the poor shall not give less, than half a shekel, when they give an offering unto the Lord, to make an atonement for your souls."

Exod. XXX., 13, 14, 15.

That the shekel was a weight and not a coin is shown by the following use of it, in weighing things other than silver and gold:

"Moreover, the Lord spake unto Moses, saying."

"Take thou also unto thee principal spices, of pure myrrh five hundred shekels, and of sweet cinnamon half as much, even two hundred and fifty shekels, and of sweet calamus two hundred and fifty shekels."

"And of cassia five hundred shekels after the shekel of the sanctuary, and of olive oil an hin."

Exod. XXX., 22, 23, 24.

A talent was three thousand shekels, and a bekah was half a shekel. This is shown by the comparative amounts given in the following passages:

"And the gold that was occupied for the work in all the work of the holy place, even the gold of the offering, was twenty and nine talents, and seven hundred and thirty shekels, after the shekels of the sanctuary."

"And the silver of them that were numbered of the congregation was an hundred talents, and a thousand seven hundred and three score and fifteen shekels, after the shekel of the sanctuary."

"A bekah for every man, that is, half a shekel, after the shekel of the sanctuary, for every one that went to be numbered, from twenty years old, and upward, for six hundred thousand and three thousand and five hundred and fifty men."

"And of the hundred talents of silver were cast the sockets of the sanctuary, and the sockets of the veil; an hundred sockets of the hundred talents, a talent for a socket."

"And of the thousand seven hundred seventy and five shekels he made hooks for the pillars, and overlaid their chapiters, and filleted them."

"And the brass of the offering was seventy talents, and two thousand, four hundred shekels."

Exod. XXXVIII., 24-29.

Further references to the shekel of the sanctuary are contained in the rules of valuation laid down by the Lord to Moses.

"And thy estimation shall be of the male from twenty years old, even unto sixty years old, even thy estimation shall be, fifty shekels of silver after the shekel of the sanctuary."

"And if it be a female, then thy estimation shall be thirty shekels."

A varying scale is then adopted for those under twenty years old, and for those over sixty years old, and beasts and lands were to be valued by the estimation of the priest.

"And all thy estimations shall be according to the shekel of the sanctuary: twenty gerahs shall be the shekel."

Lev. XXVII., 3, 4, 25.

In one chapter the two following verses appear twelve times:

"His offering was one silver charger, the weight whereof was an hundred and thirty shekels, one silver bowl of seventy shekels, after the shekel of the sanctuary; both of them full of fine flour mingled with oil for a meat offering."

"One golden spoon of ten shekels, full of incense."

Num. VII., 12-80.

All the offerings are summed up:

"Each charger of silver weighing an hundred and thirty shekels, each bowl seventy: all the silver vessels weighed two thousand and four hundred shekels, after the shekel of the sanctuary."

"The golden spoons were twelve, full of incense, weighing ten shekels apiece, after the shekel of the sanctuary: all the gold of the spoons was an hundred and twenty shekels."

Num. VII., 85, 86.

The following rule had previously been laid down:

"If a soul commit a trespass, and sin through ignorance, in the holy things of the Lord; then he shall bring for his trespass unto the Lord a ram without blemish out of the flocks, with thy estimation by shekels of silver, after the shekel of the sanctuary for a trespass offering."

Lev. V., 15.

Another reference to the shekel of the sanctuary of twenty gerahs:

Num. III., 47, 50.

Talents of silver are mentioned.

1 Kings XX., 39.
2 Kings V., 5, 22, 23.
Ezra VII., 22.

The fourth and the third part of a shekel are also mentioned.

1 Sam. IX., 8.
Neh. X., 32.

The weight of silver and gold expressed in shekels in the same connection is found in this passage:

"When I saw among the spoils a goodly Babylonish garment, and two shekels of silver, and a wedge of gold of fifty shekels weight, then I coveted them, and took them, and behold they are hid in the earth in the midst of my tent, and the silver under it."

Josh. VII., 21.

There seems to be no instance in the scriptures where either silver or gold was passed by tale. The nearest approach to it, is where the money was put in bags, and the bags were told, or counted.

"And it was so when they saw that there was much money in the chest, that the King's scribe and the high priest came up, and they put up in bags and told the money that was found in the house of the Lord."

"And they gave the money, being told into the hands of them that did the work," etc.

2 Kings XII., 10, 11.

The following passage seems to refer to a coin, or piece of silver, called a shilling:

"And it shall come to pass in that day, that every place shall be, where there were a thousand vines at a thousand silverlings, it shall even be for briers and thorns."

Isa. VII., 23.

In some instances use is made of the words "pieces of silver," or "pieces of gold."

As silver and gold were used as a medium of exchange by weight, it naturally followed that these metals would be molded, or cut into pieces of convenient weights, and that pieces containing a shekel in weight, or portions of a shekel, would be the most common. The art of the coiner had not arrived at its present state of perfection, and exact uniformity in the pieces professing, or purporting, to contain the same weight could not be attained.

Nevertheless, the uniformity would be sufficiently accurate to enable small transactions to be carried on without an actual weighing, and again, the number of pieces could be mentioned, where the transaction was not of a precise business character, or it was otherwise not essential to be strictly accurate.

Thus, Abimelech, when informing Sarah that he had given Abraham "a thousand pieces of silver," was endeavoring to tell her of the value in general terms of the sheep and oxen, and man-servants, and women-servants, he had given Abraham, as it does not appear that he had given Abraham any silver at all. If he had given silver as well as the other things, it is not likely that he would have only mentioned the silver, in giving the information to Sarah. Even then, he may have weighed the silver to Abraham, but in speaking to Sarah, referred to it as a thousand pieces.

"And unto Sarah he said, Behold I have given thy brother a thousand pieces of silver: behold he is to thee a covering of the eyes, unto all that are with thee, and with all other: thus she was reproved."

Gen. XX., 16.

The brothers of Joseph had him in a pit, and were about to murder him, but the merchants passed by, and they sold him to them for twenty pieces of silver. It is not probable that they were very particular about the amount or the exact weight, as they were seeking to get rid of him, without taking his life.

"Then there passed by Midianites, merchantmen; and they drew and lifted up Joseph out of the pit, and sold Joseph to the Ishmeelites for twenty pieces of silver, and they brought Joseph into Egypt."

Gen. XXXVII., 28.

During the famine which occurred after Joseph was in Egypt and was the occasion of his great power and glory there, the brethren of Joseph went to Egypt, and among the presents he gave them were the following:

"To all of them he gave each man changes of raiment; but to Benjamin he gave three hundred pieces of silver and five changes of raiment."

Gen. XLV., 22.

Abimelech received a present from the brethren of his mother:

"And they gave him three score and ten pieces of silver out of the house of Baal-berith, wherewith Abimelech hired vain and light persons which followed him."

Jud. IX., 4.

In some of the accounts given the words "pieces of silver" are used in connection with business transactions.

"And there was a great famine in Samaria: and behold they besieged it, until an ass's head was sold for four score pieces of silver, and the fourth part of a cab of dove's dung for five pieces of silver."

2 Kings VI., 25.

"Solomon had a vineyard in Baal-hamon; he let out the vineyard unto keepers; every one for the fruit thereof was to bring a thousand pieces of silver."

Solomon's Song. VIII., 2.

"So I bought her to me for fifteen pieces of silver, and for a homer of barley and an half homer of barley."

Hosea III., 3.

But the use of the words "pieces of silver" does not necessarily indicate that in these transactions the silver passed by tale and without weighing. This is shown by the following:

"And I said unto them, If ye think good, give me my price; and if no, forbear. So they weighed for my price, thirty pieces of silver."

"And the Lord said unto me, Cast it into the potter; a goodly price that I was prized at of them. And I took the thirty pieces of silver and cast them into the potter, in the house of the Lord."

Zech. XI., 12.

The betrayal of Samson by Delilah is recorded thus:

"And it came to pass afterward that he loved a woman in the valley of Sorek, whose name was Delilah."

"And the lords of the Phillistines came up unto her, and said unto her, Entice him, and see wherein his great strength lieth, and by what means we may prevail against him, that we may bind him to afflict him; and we will give thee, every one of us, eleven hundred pieces of silver."

Jud. XIV., 4, 5.

The attitude and entreaties of the beggar is depicted in one passage:

"And it shall come to pass, that every one that if left in thine house shall come out and crouch to him for a piece of silver and a morsel of bread, and shall say, Put me, I pray thee, into one of the priest's offices, that I may eat a piece of bread."

1 Sam. II., 36.

The departure of Naaman with the letter from the King of Syria to the King of Israel, is recorded:

"And the King of Syria said, Go to, go, and I will send a letter unto the King of Israel. And he departed and took with him ten talents of silver, and six thousand pieces of gold, and ten changes of raiment."

2 Kings V., 5.

All of the three foregoing passages are descriptive or narrative, not requiring the precise statements of the record of a business transaction.

The following seems to refer to a piece of money containing five shekels:

"And those that are to be redeemed from a month old, shall thou redeem according to thine estimation, for the money of five shekels, after the shekel of the sanctuary, which is twenty gerahs."

Num. XVIII., 16.

The visit of the Queen of Sheba to King Solomon, and her present to him of one hundred and twenty talents of gold, and spices in great abundance, and precious stones, was the occasion of putting on record some account of Solomon's wealth and revenue:

"Now the weight of gold that came to Solomon in one year was six hundred and three score and six talents of gold."

"Beside that which chapmen and merchants brought. And all the kings of Arabia and governors of the country brought gold and silver to Solomon."

"And King Solomon made two hundred targets of beaten gold: six hundred shekels of beaten gold went to one target."

"And three hundred shields made he of beaten gold: three hundred shekels of gold went to one shield. And the king put them in the house of the forest of Lebanon."

"Moreover, the king made a great throne of ivory, and overlaid it with pure gold."

"And there were six steps to the throne, with a footstool of gold, which were fastened to the throne, and stays on each side of the sitting place, and two lions standing by the stays."

"And twelve lions stood there on one side and on the other upon the six steps. There was not the like made in any kingdom."

"And all the drinking vessels of King Solomon were of gold, and all the vessels of the house of the forest of Lebanon were of pure gold none were of silver; it was not anything accounted of in the days of Solomon."

"For the king's ships went to Tarshish with the servants of Huram: every three years once came the ships of Tarshish bringing gold, and silver, ivory and apes and peacocks."

"And King Solomon passed all the kings of the earth in riches and wisdom."

"And the king made silver in Jerusalem as stones, and cedar trees made he as sycamore trees that are in the low plains in abundance."

2 Chron. IX., 13-22, 27.

That the talent was a weight is shown by the following:

"I even weighed into their hand six hundred and fifty talents of silver and silver vessels, an hundred talents, and of gold an hundred talents."

Ezra VIII., 26.

"Drams" of gold, and "pounds" of silver are mentioned.

Ezra, II., 69.
Neh. VII., 70-72.

"And gave for the service of the house of God, of gold five thousand talents and ten thousand drams, and of silver ten thousand talents, and of brass eighteen thousand talents, and one hundred thousand talents of iron."

1 Chon. XXIX., 7.

Other instructive passages in the Old Testament:

"And the king said unto Araunah, Nay; but I will surely buy it of thee at a price: neither will I offer burnt offerings unto the Lord my God of that which doth cost me nothing. So David bought the threshing floor and the oxen for fifty shekels of silver."

2 Sam. XXIV., 24.

"So David gave to Ornan for the place six hundred shekels of gold by weight."

1 Chron. XXI., 25.

"And he made the most holy house, the length whereof was according to the breadth of the house, twenty cubits, and the breadth thereof twenty cubits: and he overlaid it with fine gold, amounting to six hundred talents. And the weight of the nails was fifty shekels of gold."

2 Chron. III., 8, 9.

"It cannot be gotten for gold, neither shall silver be weighed for the price thereof."

Job XXVIII., 15.

"They lavish gold out of the bag, and weigh silver in the balance, and hire a goldsmith; and he maketh it a god: they fall down, yea, they worship."

Isa. XLVI., 6.

The Hebrews purified silver by fusing it with lead. Reference is made to this, by way of illustration, in the following passages:

"They are all grevious revolters, walking with slanders: they are brass and iron: they are all corrupters."

"The bellows are burned, the lead is consumed of the fire; the founder melteth in vain: for the wicked are not plucked away."

"Reprobate silver shall men call them, because the Lord hath rejected them."

Jer. VI., 28, 29, 30.

"Son of man, the house of Israel is to me become dross: all they are brass, and tin and iron, and lead, in the midst of the furnace; they are even the dross of silver."

Ezek. XXII., 18.

The article of F. W. Madden, M. R. A. S., to be found in an addition of the Bible published by Moore Bros. & Co., Philadelphia, and copy-righted in 1872-1877, is our authority for the statement that a correct translation of some of the passages of the Bible containing the words "pieces" of silver, or gold, would require the use of the word "shekels," and that in one or two, only, does the original text contain the word, which is the equivalent of the English word, "pieces."

Mr. Madden also informs us that in the following passages, the word "gathered," on a true translation, would be "melted."

"And Shaphan, the scribe, came to the king, and brought the king word again, and said, Thy servants have *gathered* the money that was found in the house, and have delivered it into the hand of them that do the work, that have the oversight of the house of the Lord."

2 Kings XXII., 9.

"And they have *gathered* together the money that was found in the house of the Lord, and have delivered it into the hand of the overseers, and to the hand of the workmen."

2 Chron. XXXIV., 17.

The money of the New Testament shows the influence on the Hebrews of their subordination to the Romans. One of the most common of the Roman silver coins was the denarius, which is the penny of the New Testament, and the initial letter of which is still in use to designate the penny and pence of English money. Portions of the penny were known as farthings, and two mites made a farthing. This is made clear by the following:

"Verily I say unto thee, Thou shalt by no means come out of thence, till thou hast paid the uttermost farthing."

Matt. V., 26.
Luke XII., 59.

"And there came a certain poor widow, and she threw in two mites, which make a farthing."

Mark XII., 42.
Luke XXI., 2.

The "penny," and "pence" are mentioned in the following:

"But the same servant went out, and found one of his fellow servants, which owed him an hundred pence, and he laid hands on him, and took him by the throat, saying, Pay me that thou owest."

Matt. XVIII., 28.

"And when he had agreed with the laborers for a penny a day, he sent them into his vineyard."

"And when they came that were hired about the eleventh hour, they received every man a penny."

"But when the first came, they supposed that they should receive more; and they likewise received every man a penny."

"But he answered one of them and said, Friend, I do thee no wrong, didst not thou agree with me for a penny."

Matt., XX., 2, 9, 10, 13.

"Show me the tribute money. And they brought unto him a penny."

Matt. XXII., 19.

"He answered and said unto them, Give ye them to eat. And they say unto him, Shall we go and buy two hundred pennyworth of bread, and give them to eat."

Mark VI., 37.
John VI., 7.

"And when they were come, they say unto him, Master, we know that thou art true, and carest for no man; for thou regardest not the person of men, but teachest the way of God in truth: Is it lawful to give tribute to Cesar, or not?"

"Shall we give, or shall we not give? But, he, knowing their hypocrisy, said unto them, Why tempt ye me? Bring me a penny, that I may see it."

"And they brought it. And he saith unto them, Whose image and superscription? And they said unto him, Cesar's."

"And Jesus, answering said unto them, Render unto Cesar the things that are Cesar's, and unto God, the things that are God's. And they marvelled at him."

Mark XII., 14-17.
Luke XX., 24, 25.

"For it might have been sold for more than three hundred pence, and have been given to the poor. And they murmured against her."

Mark XIV., 5.
John XII., 5.

"There was a certain creditor which had two debtors: the one owed five hundred pence, and the other fifty."

Luke VII., 41.

"And I heard a voice in the midst of the four beasts say, A measure of wheat for a penny, and three measures

of barley for a penny; and see thou hurt not the oil and the wine."

Rev. VI., 6.

"Notwithstanding, lest we should offend them, go thou to the sea, and cast an hook, and take up the fish that first cometh up; and when thou hast opened his mouth, thou shalt find a piece of money; that take and give unto them for me and thee."

Matt. XVII., 27.

Talents and pounds are mentioned in the New Testament:

"And unto one he gave five talents, to another two talents, and to another one: to every man according to his several ability; and straightway took his journey."

Matt. XXV., 15.

"And he said unto them that stood by, Take from him the pound, and give it to him that hath ten pounds."

Luke XIX., 24.

"And when he had begun to reckon, one was brought unto him, which owed him ten thousand talents."

Matt. XVIII., 24.

The betrayal of Jesus is recorded thus:

"Then one of the twelve called Judas Iscariot, went unto the chief priests."

"And said unto them, What will ye give me and I will deliver him unto you?"

"And they covenanted with him for thirty pieces of silver."

"And from that time he sought opportunity to betray him."

Matt. XXVI., 14, 15.

"And when they had bound him, they led him away, and delivered him to Pontius Pilate, the Governor."

"Then Judas, which had betrayed him, when he saw that he was condemned, repented himself, and brought again the thirty pieces of silver to the chief priests and elders,

"Saying, I have sinned in that I have betrayed the innocent blood. And they said, What is that to us? See thou to that."

"And he cast down the pieces of silver in the temple, and departed and went and hanged himself."

"And the chief priests took the silver pices and said, It is not lawful for to put them in the treasury, because it is the price of blood."

"And they took counsel and bought with them the potter's field to bury strangers in."

"Wherefore, that field was called, The field of blood unto this day."

Matt. XXVII., 2-8.

In the Revised Version of 1881, of the New Testament, the correct translation of the transaction between Judas and the chief priests is given:

"Then one of the twelve who was called Judas Iscariot, went unto the chief priests and said, What are you willing to give me, and I will deliver him unto you. And they weighed unto him thirty pieces of silver. And from that time he sought opportunity to deliver him unto them."

Matt., XXVI., 13, 14, 15.

Here we have conclusive evidence, that although Roman coins were current with the Hebrews in the time of Jesus, they passed by weight and not by tale.

There is one passage in the New Testament, however, where the value, or price, is expressed by the number of pieces.

"Many of them also which used curious arts brought their books together, and burned them before all men; and they counted the price of them, and found it fifty thousand pieces of silver."

Acts XIX., 19.

This undoubtedly has reference to the silver denarii of the Romans, or to some other well known coin, that professed to be of a certain definite weight of silver; and, hence, an aggregate amount of silver could be expressed in them. It does not follow that in any actual business transaction the pieces would be passed by tale. On the contrary, they would be weighed to see whether they were of full weight or not.

OLD TESTAMENT TABLE OF WEIGHTS.

1 Gerah equal to 220 or 224 grains of the English and American system of weights.
20 " " " 1 Shekel.
5 " " " 1 Rebah; ¼ Shekel.
10 " " " 1 Bekah; ½ Shekel.
50 Shekel " " 1 Maneh; or pound.
60 Maneh " " 1 Talent.

ROMAN WEIGHTS AND MONEY.

The money of the early Romans was wholly of copper. The unit was the as, which was originally a libra or pound in weight, but subsequently something less. The libra was divided into 12 unciae, or ounces.

In the third century B. C. the as was gradually reduced to one-half of its original value. Silver coins were introduced in the same century. They were the denarius, equal to 10 asses, and the sestertius, equal to 2½ asses.

It has been deemed probable that the sestertius was introduced at a time when the as had been so far reduced that the value of the new coin, (2½ asses), was equivalent to the original value of the as, and hence it came to be used as the standard of value.

Gold was introduced later. The aureus was equal to 100 sestertii.

The talentum was a Greek weight equal to 60 Roman librae. The libra was about three-fourths of a pound avoirdupois, that is, about 5,250 grains, as the avoirdupois pound contains 7,000 grains.

Allen & Greenough's Latin Grammar, p. 427.

ANCIENT WEIGHTS AND DENOMINATIONS OF MONEY.

The following are mentioned in an edition of Plutarch's Lives. They were taken from the tables of Dr. Arbuthnot, who gives their equivalents in English weights and English money:

WEIGHTS.

	Lb.	Oz.	Dwt.	Gr.
The Roman libra, or pound	00	10	18	13 5/7
The Attic mina, or pound	00	11	07	16 3/7
The Attic talent, equal to 60 minae	56	11	07	17 1/7

MONEY.

	L.	S.	D.	Q.
The quadrans ..... about	0	0	0	0 1/4
The as	0	0	0	0 3/10
The sestertius	0	0	1	3 3/4
The sestertium, equal to 1,000 sestertii	8	1	5	2
The denarius	0	0	7	3
The Attic obolus	0	0	1	1 1/6
The drachma	0	0	7	3
The mina, equal to 100 drachmae	3	4	7	0
The talent, equal to 60 minae	193	15	0	0
The stater-aureus of the Greeks, weighing two Attic drachmæ	0	16	1	3
The stater-daricus	1	12	3	0
The Roman aureus was of different value at different periods. According to the proportion mentioned by Tacitus, when it exchanged for twenty-five denarii, it was of the same value as the Grecian stater	0	16	1	3

IV.

The economic and financial literature contemporaneous with the formation of the Constitution of the United States strongly supports the view that it was not intended by that instrument to confer on Congress the power to debase the coinage.

ADAM SMITH.

Adam Smith's great work, the "Wealth of Nations," was published in 1776. He is sometimes called "the Father" of the science of political economy. This has been disproven; but it is almost universally conceded that he is the greatest writer on this subject ever known.

In Chap. V. he considers the price of commodities in labor, and their price in money; and concludes at p. 19 as follows:

"The money of any particular country is, at any particular time and place, more or less an accurate measure or value, according as the current coin is more or less exactly agreeable to its standard, or contains more or less exactly the precise quantity of pure gold or pure silver which it ought to contain. If in England, for example, forty-four guineas and a half contained exactly a pound weight of standard gold, or eleven ounces of fine gold, and one ounce of alloy, the gold coin of England would be as accurate a measure of the value of goods at any particular time and place as the nature of the thing would admit. But if, by rubbing and wearing, forty-four guineas and a half generally contain less than a pound weight of standard gold, the diminution, however, being greater in some pieces than in others, the measure of value comes to be liable to the same sort of uncertainty to which all other weights and measures are commonly exposed. As it rarely happens that these are exactly agreeable to their standard, the merchant adjusts the price of his goods as well as he can, not to what those weights and measures ought to be, but to what, upon an average, he finds, by experience, they actually are. In consequence of a like disorder in the coin, the price of goods comes, in the same manner, to be adjusted, not to the quantity of pure gold or silver which the coin ought

to contain, but to that which, upon an average, it is found, by experience, it actually does contain.

"By the money price of goods, it is to be observed, I understand always the quantity of pure gold or silver for which they are sold, without any regard to the denomination of the coin. Six shillings and eight pence, for example, in the time of Edward I., I consider as the same money price with a pound sterling in the present times, because it contained, as nearly as we can judge, the same quantity of pure silver."

PELATIAH WEBSTER.

He was one of the ablest essayists of the revolution. His writings were highly prized by Madison, who as late as 1820 requested Tench Coxe to get him a copy of Webster's "Dissertation on the Political Union and Constitution of the Thirteen United States," published in 1783, his copy having disappeared from "his collection of such things." (3 Letters and Writings of James Madison, 185.)

This essay is said to have been the first expression of the idea that a National Assembly ought to be established with power not only to enact laws but to enforce them on individuals as well as on States. (Taylor's English Constitution, 65.)

In 1780 Webster published his "Strictures on Tender Acts." He had reference to acts making paper money a legal tender, but his language applies as well to acts making debased coins a legal tender.

"The nature of a tender-act is no more or less than establishing by law the standard value of money, and has the same use with respect to the currency that the legal standard pound, bushel, yard, or gallon has to those goods, the quantities of which are usually ascertianed by those weights and measures; therefore to call anything a pound or shilling which really is not so, and make it a legal standard is an error of the same nature as diminishing the standard bushel, yard, gallon, etc., or making a law that a foot shall be the legal yard, an ounce the legal pound, a peck the legal bushel, or a quart the legal gallon, and compelling everybody to receive all goods due them by such different measures.

"Further, to make anything the legal standard of any of these which is not of fixed but of variable nature is an error of the same kind and mischief as the other; e. g., to

make a turnip the standard pound weight which may dry up in the course of a year to a pith of not more than two or three ounces, or to make a flannel string the standard yard which will shrink in using to half its length. The absurdity of this is too glaring to need anything further said on it."

"The first observation which occurs to me is that the bills which are made a tender contain a public promise of money to be paid in six years. On which I beg leave to remark that the best and most indubitable security of money to be paid in six years or any future time is not so good or valuable as ready cash. The truth of this proposition is so evident and obvious to everybody that it cannot need proof.

"Therefore the law which obliges a man to accept these bills instead of ready cash obliges him to receive a less valuable thing in full payment of a more valuable one, and injures him to the amount of the difference; and so far as a direct violation of the laws of commutative justice—laws grounded in the nature of human rights, supported by the most necessary natural principles, and enjoined by the most express authority of God Almighty, and which it is not possible that any legislature on earth should have the right to infringe or abrogate."

Webster was writing about a currency that was supported by a public promise to pay, but how much stronger his words are when they are applied to debased coins which are not supported by any promise to pay or redeem, such as the silver dollars issued under the Bland-Allison Act.

Further on Webster wrote:

"Naked facts are powerful things, and arguments sometimes do best and have the greatest effect when addressed to the feelings of mankind; and that I may press the matter as close as I can I beg leave to propose the following case, viz:

"Suppose a man of grave phiz and character should in distress apply to his neighbor for the loan of 1,000 silver dollars with solemn promise on his honor and truth to repay them in a month, and in the meantime the tender act under consideration should pass into law, and the borrower at the month's end, should tender 1,000 of the new paper dollars in payment.

"I beg leave to propose to every member of the assembly who voted for that law, and to every other man who is a member of this state, what their sentiments of that action would be, and in what light they would view the borrower, who tendered the paper dollars (i. e., 2-5 of the debt) in payment of the silver ones he had received; i. e., would

they consider him as an upright honest man, or a shameless rascal."

Near the end of the essay is this passage:

"Further, the act alters and of course destroys the nature and value of public and private contracts, and of consequence strikes at the root of all public and private credit. Who can lend money with any security, and of course who can borrow, let his necessity and distress be ever so great? Who can purchase on credit or make any contract for future payment? In every deed all confidence of our fellow citizens in one another is hereby destroyed as well as all faith of individuals in the public credit."

Webster's Essays, 128, 130, 138.

In another essay published by Webster at the same time as the one from which we have quoted, he made this proposition to the public:

"I propose,

"1. To repeal the acts for issuing the new continental bills of March 18, 1780; and

"2. All the tender acts; and

"3. To let the laws have their free course to oblige every man to fulfil his contracts as plain justice requires; in order to this a scale of depreciation for some time past may be easily made for the government of the courts; or the court and jury may be empowered to give judgment for what appears to be in justice due on the full hearing of the case; i. e., I humbly propose to be honest once more, to revive our old notions and practice of justice and equity; i. e., to suffer justice and judgment to run down our streets and overflow our land.

"My reason for this proposal is, because I really believe it is both natural and revealed truth that 'righteousness exalteth a nation, but sin is a reproach to any people.'"

Webster's Essays, 149.

April 3, 1781, the Assembly of Pennsylvania did pass an act making a scale of depreciation as proposed by Webster.

His writings had great influence in bringing the public mind back to correct principles, and in his "Strictures on a Publication in the Freeman's Journal of May 16, 1781," Webster himself has occasion to refer to his work in this direction.

Webster's Essays, 187-188.

Webster republished his essays in a volume in 1791, and a note inserted by him, at p. 197, furnishes conclusive evi-

dence that the power to alter contracts by tender acts was forbidden by public opinion, and condemned by the constitutions adopted between 1781 and 1791.

"For we find that the Assembly of Pennsylvania, with the recommendation of Congress, on June 2, 1781, repealed all the tender acts then existing in that State and discharged all penalties and forfeitures annexed in them, and the like was done about the same time in all the other States."

"And so strongly is the injustice of that wild system impressed on the general mind that it is an article in most of the constitutions since published, that all contracts shall be fulfilled according to the true and honest intention of them."

In an essay published October 12, 1787, Webster answered some of the objections that had been made to the constitution of the United States. In answer to the objection that the constitution contained no bill of rights, he wrote:

"I answer this is not true; the constitution contains a declaration of many rights, and very important ones, e. g., that people shall be obliged to fulfill their contracts and not avoid them by tenders of anything less than the value stipulated; that no ex post facto laws shall be made, etc., but it was no part of the business of their appointment to make a code of laws, it was sufficient to fix the constitution right; and that would pave the way for the most effective security of the rights of the subject."

Webster's Essays, 407.

NOAH WEBSTER.

He was also a prominent writer of the period preceding the adoption of the Constitution of the United States, and was strongly in favor of that instrument. Writing on the "Principles of Government and Commerce," in 1788, he laid down the following:

"As the State has no right to break its own promises, so it has no right to alter the promises of individuals. When one man has engaged to pay his debt in wheat, and his creditor expects the promise to be fulfilled, the legislature has no right to say the debt shall be paid in flax or horses. Such an act saps all the supports of good faith between man and man; it is the worst kind of tyranny.'

"For this reason all tender laws which oblige a creditor to take for his debt some article which he never intended, nor engaged to take, are highly unjust and tyrannical. The intention of the contracting parties should be strictly regarded; the State may enforce that intention, but can never have a right to interfere and defeat it. A legislature has no right to put a bargain on any footing but that on which the parties have placed it or are willing to place it."

Noah Webster's Essays, 41.

ROGER SHERMAN

was one of the most distinguished statesmen of the Revolution. He signed the petition to the King, the Declaration of Independence, the Articles of Confederation, and the Constitution of the United States. Jefferson spoke of him as "a man who never did a foolish thing"; and Nathaniel Macon declared that "he had more common sense than any man I have ever known."

It was on his and Mr. Wilson's motion in the Federal Convention that the States were absolutely prohibited from emitting bills of credit or making anything but gold and silver coin a tender in payment of debts, instead of allowing them to do so with the consent of Congress. (5 Elliot Deb. 484.)

His and Oliver Ellsworth's letter transmitting a printed copy of the Constitution to the Governor of Connecticut contains the following:

"The restraint on the Legislatures of the several States respecting emitting bills of credit, making anything *but money* a tender in payment of debts, or impairing the obligations of contracts by ex post facto laws, was thought necessary as a security to commerce, in which the interest of foreigners as well as of the citizens of different States, may be affected." (1 Elliot Deb. 492.)

Roger Sherman's views on money are shown by the care with which he preserved a pamphlet published in England in 1774, and on which he indorsed his name, and the year 1776. Arthur Outram Sherman of New York, discovered this pamphlet among the papers of Frederick Roger Sherman, the grandson and executor of Roger Sherman.

As an example of the monetary literature of the revolutionary period, we make the following quotations from the

so highly prized by Roger Sherman.

"The author of the pamphlet of 1774 says: 'I will endeavor to show as briefly as possible that what relates to coin is not of such a complex, abstruse nature as it is generally made; and that no more than common justice, with common sense, are required, in all regulations concerning it.'"

Continuing, he says: (The italics are in the original.)

"Coins are pieces of metal on which an impression is struck, which impression is understood by the legislature to ascertain the *weight*, and the *intrinsic value* or *worth* of each piece.

The *real value* of coins depends not on a piece being called a *guinea*, a *crown*, or a *shilling;* but the true worth of any particular piece of gold or silver is what such piece contains of *fine* or *pure gold* or *silver*.

The quantity of *silver* and *copper* mixed by way of *alloy* is fixed by the legislature, to make a lawful proportion, and both *gold* and *silver* are brought to what is called *standard*.

It is for *public convenience* that coins were invented, and they are no more than an *universal accepted merchandise;* for gold and silver in bullion, being of equal weight, purity and fineness, must be of equal value, the one to the other; for the stamp on either of these metal, duly proportioned, neither adds to nor takes from their intrinsic value.

If when coined a due proportion of these metals, the one to the other, be not established, the disproportion will be felt and proved; and that metal wherein the excess in the proportion is allowed will preferably be made use of, either in exportation or in manufacture.

It is the current market price of gold and silver that must govern the carrying it to the mint. It is absurd to think that anyone should send gold to be coined that should cost more than £3 17s. 10½d. an ounce, or silver more than 62 pence the ounce; and as absurd would it be to pretend that those prices *only* shall be the constant invariable prices.

That to the lightness of the silver coin now remaining in Great Britain we owe all the silver coin we now have any person with weights and scales may prove.

Were *silver* to be coined, 65 *shillings out of a pound troy weight of standard silver;* if those 65 shillings would sell

at a price that makes it worth while to melt or export them they must and will be considered and used as a merchandise, and the same will hold as to *gold*. Though the proportion of about 14½ of pure silver to 1 of pure gold in neighboring states be *now* fixed, in regard to their coin, and it is submitted such proportion should be attended to in this kingdom, yet that proportion may be subject to alteration; for this plain reason, that should the silver mines produce a quantity of that metal so as to make it greatly abundant, more in proportion than it now does, and the gold mines produce no more than now they do, more silver must be requisite to purchase gold.

It matters not whether *silver* or *gold* be called *standard money;* but it seems most rational that the most scarce and precious metal should be the *unit* or *standard*.

And so long as the sea does not overflow the land, and industry continues, so long will those metals not be wanting. And paper in the general chain of credit and commerce is as useful as they are; since the issuers or coiners of that paper are understood to have some *equivalent* to answer for what the paper is valued at; and no *metal* or *coin* can do more than find its *value*."

V.

The present is an opportune time for the Supreme Court of the United States to render a decision construing the grant of power to Congress "to coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures."

The Secretary of the Treasury from 1878 to the present time has succeeded in keeping the silver dollar at a parity with the gold dollar by acepting the silver dollar as a legal tender in all payments to the government and refusing to use it as a legal tender in payments by the government. A bill is now (April 15, 1902) pending in Congress to make the silver dollar redeemable in gold, and it will probably be passed before this case is decided.

Such a law would compel the government to make good to the public the profits realized by it in purchasing silver bullion under the Bland-Allison Act and the Sherman Silver Law and coining it into dollars; and it would place the silver dollar among the subsidiary coins, redeemable by law in gold. Until such a bill is passed, the 534,606,654 silver dollars now (March 1, 1902) in existence will be a menace to the creditor class.

A decision of this case favorable to the views of the plaintiff in error before the passage of such a law, would simply hasten its enactment; and in addition it would prevent Congress in future legislation from making any change in the weight or fineness of the standard coins, unless an exception was made, preserving inviolate all pre-existing contracts for the payment of money.

Such a result would be similar to that accomplished by Queen Elizabeth in 1560, when she restored the coins of England to their ancient purity; and it would have the additional force of a written constitution as expouned by a supreme tribunal having jurisdiction to construe and enforce it.

We respectfully submit that the *obiter dicta* of Mr. Justice Strong in the Legal Tender Cases, 12 Wall., 457, and of Mr. Justice Gray in Juilliard vs. Greenman, 110 U. S., 444,

quoted at pages 128, 129, 130 of the first volume of this brief, should be overruled, and that the decree of the Supreme Court of Michigan in this case, should be reversed.

ALBERT B. HALL,
Attorney for Plaintiff in Error.

FRED A. BAKER,
In pro. per., Of Counsel.